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IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY
PENNSYLVANIA

CIVIL DIVISION

* * * * * No. 06-53273

COMMONWEALTH FINANCIAL
SYSTEMS, INC.

VS.

LARRY A. SMITH

* * * * *

Media, PA, July 16, 2009

Courtroom Number 7

TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE CHARLES B. BURR, II

EDWIN MATZKIN, ESQUIRE
For the Plaintiff

LAWRENCE RUBIN, ESQUIRE
For the Defendant

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ON BEHALF OF THE PLAINTIFF:

Daniel Venditti 13 50 70

ON BEHALF OF THE DEFENDANT:

[None]

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MARKED ADMITTED

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P-2 Citibank billing statements 24

P-3 Bill of Sale and Assignment
and Assumption Agreement for
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ON BEHALF OF THE DEFENDANT:

[None]

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P R O C E E D I N G S

July 16, 2009

THE CLERK:

Courtroom 7 is now in session, the Honorable Charles B. Burr presiding. Please be seated.

Good morning, Your Honor.

MR. MATZKIN:

Good morning, Your Honor.

MR. RUBIN:

Good morning, Your Honor.

THE COURT:

Good morning everybody. This is the case of Commonwealth Financial Systems, Inc. v. Larry Smith, Civil Action No. 06-53273.

Will Counsel identify themselves for the record, please, and the party they represent?

MR. MATZKIN:

Yes good morning, Your Honor. Edwin "Ed" Matzkin on behalf of the Commonwealth, Supreme Court ID No. 48822.

MR. RUBIN:

Lawrence Rubin ID No. 27195 on behalf of Larry Smith.

THE COURT:

I understand, Counsel, you agreed to have me

1 try this case non-jury. Is that correct?

2 MR. RUBIN:

3 Yes.

4 MR. MATZKIN:

5 Yes.

6 THE COURT:

7 All right, thank you.

8 MR. MATZKIN:

9 However there is a threshold issue, Your
10 Honor.

11 THE COURT:

12 All right.

13 MR. MATZKIN:

14 I did file a motion...

15 THE COURT:

16 Do you wish to make a brief opening statement
17 here or a threshold...

18 MR. MATZKIN:

19 Before we even get to that.

20 THE COURT:

21 Go ahead.

22 MR. MATZKIN:

23 I note that the Defendant isn't here. I did
24 file a Motion to Attend pursuant to Rule 234.3
25 and she is not here. I would therefore ask

1 for an appropriate sanctions pursuant to
2 4019(c), specifically (c)(2), that the defense
3 will not be permitted to support or oppose any
4 claims or defenses prohibiting the party from
5 introducing into evidence any documents,
6 things or testimony.

7 MR. RUBIN:

8 Your Honor, with -- to respond to that, Mr.
9 Matzkin waited until the day before trial to
10 serve that notice. I received it yesterday.
11 234.2 or 4 I believe he's referring to talks
12 about reasonable notice. Now I don't think the
13 day before trial is reasonable notice in light
14 of the fact that my client wasn't even there
15 during the arbitration and he knew she wasn't
16 there and he complained that he wasn't able to
17 cross-examine her. Now it has been months and
18 months and months since the arbitration. He
19 knew that she was an elderly person. He knew
20 that I wasn't going to bring her. And yet he
21 waits until the day before trial to send the
22 notice. I was -- on that day I had a hearing
23 in Bankruptcy Court. How could I possibly
24 bring in an elderly woman with medical
25 problems and prepare her and go and do my

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1 bankruptcy hearing the day before trial? I
2 don't think the statute thinks that's a
3 reasonable notice. I think reasonable notice
4 is 30 days, but even if it's not 30 days I
5 don't think it's one day.

6 THE COURT:

7 Why did you wait Mr. Matzkin?

8 MR. MATZKIN:

9 May I respond, Your Honor?

10 THE COURT:

11 Yes.

12 MR. MATZKIN:

13 We received -- my office received a telephone
14 call on July the 10th assigning this matter for
15 today.

16 THE COURT:

17 And you were -- before that you knew you were
18 on the June 22nd trial list.

19 MR. MATZKIN:

20 We clearly were on the list. However the
21 notice to appear, which is a prescribed form
22 from the state, tells the person that they
23 have to appear in such and such Courthouse,
24 such and such Courtroom at such and such time.

25 THE COURT:

1 Well you can put TDA in there.

2 MR. MATZKIN:

3 I didn't have that information.

4 THE COURT:

5 Well, you knew it was going to trial. You
6 wanted him at trial. You could have even
7 written Mr. Rubin a letter saying, "Please
8 produce your client."

9 MR. MATZKIN:

10 I did.

11 THE COURT:

12 Let me just indicate...

13 MR. MATZKIN:

14 I did.

15 THE COURT:

16 ...so the record and the Court reporter isn't
17 accused that the Defendant is Larry Smith, but
18 I understand Larry Smith is a female.

19 MR. RUBIN:

20 Larry Smith is an elderly woman.

21 THE COURT:

22 Okay. So somebody isn't confused when we're
23 referring to "her" or "she" that that's the
24 Defendant, Larry Smith.

25 MR. MATZKIN:

1 Since she did not appear at arbitration, I
2 don't know how old she is and I have no idea
3 of her health condition, nor do I care to be
4 perfectly frank. I filed a notice pursuant to
5 a rule. I believe based upon the advice of
6 when the matter was going to trial it was
7 timely because Mr. Rubin, in my opinion,
8 should have known that he would have to
9 produce his Defendant, his client to appear at
10 a trial.

11 THE COURT:

12 No, he doesn't. It could be his trial
13 strategy that he decides not to produce his
14 client. If you want her there, you should
15 file a notice. It doesn't say anything about
16 reasonable time. I guess that's -- I assume
17 it's inferred in the rule.

18 MR. RUBIN:

19 No, it actually says reasonable time. It
20 actually says.

21 THE COURT:

22 Subpoena to attend trial?

23 MR. RUBIN:

24 Not subpoena, the notice to appear.

25 THE COURT:

1 Well that's not 23 -- oh, .3

2 MR. MATZKIN:

3 234.3.

4 THE COURT:

5 I'm looking at the wrong rules, excuse me.

6 "The notice shall be served reasonably in
7 advance of the date upon which attendance is
8 required. It may also require the party to
9 produce documents or things."

10 MR. MATZKIN:

11 Which I didn't do. With respect to
12 preparation, what's good for the goose is good
13 for the gander. He knew this was coming to
14 trial. He should have prepared his witness
15 long before -- long before this.

16 THE COURT:

17 Not if he's not intending to call him.

18 MR. MATZKIN:

19 And that's obviously the strategy, Judge. She
20 wasn't -- she didn't appear at the
21 arbitration, she's not here. And I just want
22 to...

23 MR. RUBIN:

24 Well, that is a strategy.

25 MR. MATZKIN:

1 Fine.

2 MR. RUBIN:

3 That's why he should have done it months and
4 months ago.

5 MR. MATZKIN:

6 I just want to reassert the fact that he can't
7 testify, not can he submit any evidence.

8 THE COURT:

9 Well, that's obvious. I mean you can't
10 testify as to what Larry Smith knows or did or
11 didn't do.

12 MR. MATZKIN:

13 Thank you, Your Honor.

14 THE COURT:

15 So I will...

16 MR. RUBIN:

17 Nor do I intend to.

18 THE COURT:

19 I don't -- I think in effect you're getting
20 what you asked for because I'm not going to
21 preclude him from producing evidence, but he
22 doesn't have any testimony anyway. I don't
23 know whether he's got documents, but I don't
24 think the notice to attend was served timely.
25 So...

1 MR. RUBIN:

2 Right.

3 MR. MATZKIN:

4 Thank you.

5 MR. RUBIN:

6 I also have a motion. I would move to dismiss
7 the case based upon the statute of
8 limitations.

9 THE COURT:

10 Denied, let's move on.

11 MR. MATZKIN:

12 Thank you, Your Honor. In view of the fact
13 that there's been some discussion, I will
14 waive an opening statement.

15 THE COURT:

16 Okay.

17 MR. MATZKIN:

18 And if he wishes to make one, I'll defer to
19 him before I present my case.

20 THE COURT:

21 Do you want to say anything now, Mr. Rubin, a
22 brief opening?

23 MR. RUBIN:

24 Yes. What we are going to show through the
25 admission of the verified Complaint and

1 through the admission of the Answer is that
2 Plaintiff's own pleadings set the date of
3 default as February 7th, '02. The Complaint in
4 this case was not filed until March 7th, '06.
5 That's in excess of four years. The
6 Plaintiff's own pleading says that the last
7 payment was in January of '02. Just to show
8 that this is not a mistake, four supports --
9 paragraph four supports five and paragraph
10 five supports four. Now the Plaintiff has
11 done nothing to modify the pleadings or to
12 bring that to my attention that it was in
13 error or anything like that. I think that the
14 Plaintiff is bound by his pleadings, and
15 that's where we're going with this case.

16 Thank you.

17 THE COURT:

18 I understand your position, Mr. Rubin.

19 All right, Mr. Matzkin do you want to
20 proceed please?

21 MR. MATZKIN:

22 Yes, I would call Mr. Daniel Venditti. Excuse
23 me, "Danny" he goes by.

24 ***

25 DANIEL VENDITTI,

Diaz Data Services
331 Schuylkill Street, Harrisburg, PA 17110 ~ 717-233-6664

1 having been first duly sworn, was called as a witness
2 herein and was examined and testified as follows:

3 ***

4 DIRECT EXAMINATION

5 BY MR. MATZKIN:

6 Q. Mr. Venditti, who are you employed
7 by?

8 A. Commonwealth Financial Systems.

9 Q. In what capacity?

10 A. Vice-president.

11 Q. In what area of the business?

12 A. The collections division.

13 Q. How many employees does Commonwealth
14 Financial Systems have?

15 A. Roughly about 180 right now.

16 Q. Where are they located?

17 A. A couple different locations. The
18 main office is at 245 Main Street in Dixon City,
19 Pennsylvania.

20 Q. And you -- where do you live?

21 A. I live in the Scranton area.

22 ***

23 THE COURT:

24 In where?

25 THE WITNESS:

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1 The Scranton area.

2 THE COURT:

3 Scranton.

4 ***

5 BY MR. MATZKIN:

6 Q. And you drove down here this morning to
7 testify on their behalf. Is that correct?

8 A. Yes, I did.

9 Q. Okay. What business is Commonwealth
10 Financial Systems in?

11 A. Debt purchasing and debt collection.

12 Q. Have they ever been recognized as a
13 reputable and growing company?

14 A. Yes.

15 Q. By whom?

16 A. Lackawanna County.

17 ***

18 MR. RUBIN:

19 Objection, relevance as to reputable.

20 THE COURT:

21 Sustained.

22 MR. MATZKIN:

23 I'll withdraw the question.

24 ***

25 BY MR. MATZKIN:

1 Q. What is your -- exactly what is your
2 capacity with Commonwealth? Besides a title, what do
3 you do?

4 A. I oversee the portfolio collection
5 division, which is the division of the company which
6 purchases and collects.

7 Q. How long have you been employed by
8 Commonwealth?

9 A. Since April of 2003.

10 Q. 2000 and?

11 A. Three.

12 Q. Are you familiar with the -- with the
13 purchase of debt portfolios?

14 A. Yes, I am.

15 Q. Are you familiar with the documents that
16 accompany such a purchase?

17 A. Yes, I am.

18 Q. Are you familiar with the bills of sale
19 that represent the transaction between buyer and seller?

20 A. Yes, I am.

21 Q. Are you familiar with the computer
22 records that exchange as a result of the transaction?

23 A. Yes, I am.

24 Q. Did you have any opportunity to review
25 the case we're here to discuss today?

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1 A. Yes.

2 ***

3 MR. MATZKIN:

4 May I approach, Your Honor?

5 THE COURT:

6 You may. P-1?

7 MR. MATZKIN:

8 Each one is separately marked.

9 THE COURT:

10 Okay.

11 ***

12 BY MR. MATZKIN:

13 Q. I'm going to hand you a packet of papers
14 that we will be referring to substantially in the order
15 in which they are designated.

16 ***

17 MR. MATZKIN:

18 All of these documents -- I don't believe all
19 of them were attached to the pleading at the
20 time. All of them were submitted under Rule
21 1305 at the arbitration, Judge, with the
22 exception of Exhibit 4, the two added legal
23 sized sheets of paper which we will get to
24 shortly.

25 ***

1 BY MR. MATZKIN:

2 Q. Mr. Venditti, I'm going to direct you to
3 Plaintiff's 1, pages "A" through "D." What does that
4 represent?

5 A. This is a standard Citibank credit card
6 agreement.

7 ***

8 MR. RUBIN:

9 Objection. He hasn't qualified this witness.
10 He doesn't work for Citibank. He's a debt
11 buyer. How does he know what standard -- how
12 does he know if this even applies to this
13 Defendant?

14 THE COURT:

15 He just asked him to identify the document.
16 It says Citibank Card agreement on top of it.
17 Overruled.

18 ***

19 BY MR. MATZKIN:

20 Q. Mr. Venditti, are you familiar with this
21 document?

22 A. Yes.

23 Q. Is this document referred to in the
24 purchase and sale process?

25 A. Yes.

1 Q. Do you recall when this account was
2 purchased?

3 A. Not the exact date, but...

4 Q. All right, we'll get to it. Do you have
5 any idea of the age of this account?

6 A. Yes, it's several years old.

7 Q. All right, how are most -- strike that.

8 I'm merely going to ask you two questions
9 about this. On the second page designated page two, the
10 paragraph almost at the bottom. It's been marked by my
11 office as "Interest rate." That establishes an interest
12 rate and allows that rate to change. Correct?

13 ***

14 MR. RUBIN:

15 Objection, leading.

16 THE COURT:

17 You're right, technically, sustained. What
18 does it say Mr. Venditti?

19 ***

20 BY MR. MATZKIN:

21 Q. What does it say, Mr. Venditti?

22 A. It establishes the interest rate to which
23 the card is going to accrue up until a certain rate and
24 advises the consumer that they may be eligible for a
25 lower rate, you know, as part -- as per the terms of the

1 contract.

2 ***

3 THE COURT:

4 12.9 percent plus prime or the maximum not to
5 exceed 19.8 percent.

6 THE WITNESS:

7 Correct.

8 ***

9 BY MR. MATZKIN:

10 Q. Now Mr. Venditti I'm going to refer you
11 to the last page that is designated page -- column six,
12 the paragraph called "Collection Cost," which is also
13 marked. What does that provide?

14 A. This is a provision in the contract which
15 provides for legal fees and any other costs in the
16 normal course of collection which may take place in the
17 event of default.

18 Q. How -- are you familiar with how this
19 agreement gets in the hands of a cardholder?

20 A. It's issued with the credit card.

21 ***

22 MR. RUBIN:

23 Objection, he isn't qualified for that. He's
24 a debt buyer. He doesn't know what Citibank
25 does.

1 THE COURT:

2 Are you denying your client got a Citibank
3 credit card agreement, a Citibank card?

4 MR. RUBIN:

5 I'm denying -- I don't know whether she got
6 this agreement. As a matter of fact, this
7 agreement is a '96 agreement. The debt is
8 2002. By the looks of this, this doesn't even
9 apply to this case. But it's not -- it's not
10 for me to say...

11 MR. MATZKIN:

12 Your Honor she got the card in 1999.

13 MR. RUBIN:

14 He has to -- he has to prove...

15 MR. MATZKIN:

16 This was the agreement in force at the time.

17 MR. RUBIN:

18 Excuse me. He has to prove his case, Your
19 Honor.

20 THE COURT:

21 I understand.

22 MR. RUBIN:

23 I mean this witness is just a debt buyer.
24 They don't know what goes on in Citibank. He
25 hasn't testified as to what goes on.

1 THE COURT:

2 All right, sustained.

3 ***

4 BY MR. MATZKIN:

5 Q. Mr. Venditti, where did you work before
6 you worked for Commonwealth?

7 ***

8 MR. RUBIN:

9 Objection.

10 THE COURT:

11 Overruled.

12 THE WITNESS:

13 Action Management, Incorporated for a period
14 of two years prior. Before that PRS
15 Associates located in Voorhees, New Jersey and
16 MRS Associates, Incorporated located in Cherry
17 Hill, New Jersey. Before that I was active
18 duty United States Air Force.

19 ***

20 BY MR. MATZKIN:

21 Q. Did you ever work for a credit card
22 issuer?

23 A. Not directly.

24 Q. How many years have you been in the
25 credit and collection business?

1 A. Since 1997.

2 Q. Since 1997 have you been always employed
3 by debt buyers?

4 A. No.

5 Q. For what period of that time have you
6 been involved with debt buyers who purchase the accounts
7 from Citibank?

8 A. Since Action Management on -- which was
9 2001.

10 Q. Do you recall the loan agreements that
11 you saw when you were employed by Action Management?

12 ***

13 MR. RUBIN:

14 Your Honor, I'd object to the relevancy. I
15 mean what he did with other debt buyers has no
16 bearing on this case. I'm sure this man is
17 qualified to be in the debt buyer business,
18 but that has no bearing on this case. It has
19 no bearing on this contract, whether this
20 contract is the Defendant's contract or what
21 the terms of the contract say or whether they
22 apply to the Defendant. The only thing he
23 does, and we admit it, he's a debt buyer. We
24 admit he's vice-president of the company.
25 That's about as far as that goes.

1 MR. MATZKIN:

2 No it goes a lot further because there's such
3 a thing as business records and business
4 records exceptions. And it has been long held
5 that in the case of debt buying the records of
6 the seller become the records of the buyer.
7 Now this is not something that anybody printed
8 in their basement and called it a credit card
9 agreement. This is the credit card agreement
10 that was in force at the time it was...

11 MR. RUBIN:

12 Your Honor, he's testifying.

13 MR. MATZKIN:

14 It was provided to my client electronically
15 with the record of the purchase of this
16 particular account which we will get to in a
17 moment, along with all the relevant...

18 THE COURT:

19 All right, the objection is overruled.

20 MR. MATZKIN:

21 Thank you, Your Honor.

22 THE COURT:

23 Please proceed.

24 MR. RUBIN:

25 Your Honor he still has to comply with 803.

1 He still has to qualify this record.

2 THE COURT:

3 Okay, well, maybe he's going to get there. I
4 can't rule on that at this moment.

5 MR. RUBIN:

6 All right. It's 803(6).

7 MR. MATZKIN:

8 There is also a business records exception. I
9 am through with the credit card agreement.

10 I am now going to ask -- refer you to
11 Exhibit 2 "A" through "F."

12 ***

13 BY MR. MATZKIN:

14 Q. Take a look at them and tell me what they
15 are generally.

16 A. These are monthly billing statements
17 issued by Citibank...

18 ***

19 THE COURT:

20 What are you at, P-2?

21 MR. MATZKIN:

22 Yes, sir.

23 THE WITNESS:

24 ...for a Citibank Platinum Select credit card.

25 ***

1 BY MR. MATZKIN:

2 Q. Take a look through them. I believe
3 there are three?

4 A. Correct.

5 Q. Who were they sent to?

6 A. Larry A. Smith.

7 ***

8 MR. RUBIN:

9 Objection. He doesn't know, Your Honor. He
10 doesn't work at Citibank. He doesn't know
11 where they were sent, or even if they were
12 sent. These may never have been sent. He has
13 to qualify these things with knowledge.

14 THE COURT:

15 I'll sustain your objection at this point.

16 MR. MATZKIN:

17 I'll withdraw -- I'll withdraw the question
18 for the moment.

19 ***

20 BY MR. MATZKIN:

21 Q. Mr. Venditti, how -- did your office --
22 did your firm obtain these?

23 A. Through our broker from Citibank.

24 Q. And how?

25 A. By request and electronically.

1 Q. Are they what are called media?

2 A. Yes.

3 Q. You requested media in this account.

4 What is...

5 ***

6 THE COURT:

7 Requested what, media?

8 MR. MATZKIN:

9 Media.

10 THE WITNESS:

11 Media.

12 MR. MATZKIN:

13 M-E-D-I-A.

14 THE WITNESS:

15 It's industry terminology, Your Honor.

16 ***

17 BY MR. MATZKIN:

18 Q. I was just going to say that's an
19 industry term. What does media mean?

20 A. Any documents that would be associated
21 with any specific account.

22 Q. Including, but not limited to, what for
23 example?

24 A. Card statements, affidavits, bills of
25 sale, things of that nature.

1 Q. Card statements and affidavits, you get
2 them electronically and you print them out. Is that
3 correct?

4 A. That is correct.

5 Q. You didn't create these. You didn't
6 print them anew. They came electronically through your
7 intermediary from Citibank. Is that correct?

8 ***

9 MR. RUBIN:

10 Objection, he didn't say that. He said he got
11 them from a broker. He never he got them from
12 Citibank.

13 THE COURT:

14 From a broker at Citibank electronically and
15 as requested.

16 MR. RUBIN:

17 No, I...

18 MR. MATZKIN:

19 I said an intermediary, Judge.

20 MR. RUBIN:

21 Your Honor he did not say Citibank, he said a
22 broker. A broker is different from Citibank.
23 A broker could be a mass debt buyer. He
24 hasn't -- he hasn't...

25 THE WITNESS:

1 Actually, Your Honor, I said through a broker
2 from Citibank.

3 MR. RUBIN:

4 Well he hasn't established that, Your Honor.
5 He hasn't established who the broker is or
6 whether or not they work for Citibank.

7 THE COURT:

8 Well, what if he didn't? He got the records
9 from Citibank. Does it make any difference
10 why or how he got them?

11 MR. RUBIN:

12 I don't think he said he got them from
13 Citibank, Your Honor. He said he got it from
14 a broker.

15 THE COURT:

16 No, I mean he got Citibank's records. Does it
17 matter how he got them?

18 MR. RUBIN:

19 He got -- he got records that have Citibank
20 printed on them.

21 THE COURT:

22 Right.

23 MR. RUBIN:

24 That's it.

25 MR. MATZKIN:

1 And again under the business records, the
2 business records of the original issuer and
3 the people whose hands they passed they are
4 still business records.

5 ***

6 BY MR. MATZKIN:

7 Q. Now we're going to start to move through
8 this a little quick, because I see where this is going.

9 I'm going to refer you to the third statement.
10 The statement closing date of that statement is what?

11 A. 3/26...

12 Q. No, excuse me, the statement closing
13 date.

14 ***

15 THE COURT:

16 You're on the third billing statement?

17 MR. MATZKIN:

18 Yes.

19 THE WITNESS:

20 The statement closing date?

21 MR. MATZKIN:

22 Yes.

23 THE WITNESS:

24 Is 3/26/2002.

25 MR. MATZKIN:

1 May I approach, Your Honor?

2 THE COURT:

3 Yes. Where is that date?

4 ***

5 BY MR. MATZKIN:

6 Q. The statement closing date -- I'm sorry,
7 I gave you...

8 A. I'm looking at the wrong one.

9 Q. I apologize. I gave -- I directed you to
10 the last one and I was going to get to that one. The
11 one before that, I apologize.

12 A. 2/25/2002.

13 ***

14 THE COURT:

15 Wait a minute, let me see...

16 MR. MATZKIN:

17 Okay. March -- I'm sorry, February 25, 2002.

18 THE COURT:

19 Where are you reading that date?

20 THE WITNESS:

21 It's this one, Your Honor, right there. It
22 says "Statement closing." It should -- it
23 should -- it should be in the same place on
24 all of them.

25 MR. MATZKIN:

1 A few lines under the bold "Citi."

2 THE COURT:

3 Do I have four billing statements then?

4 MR. MATZKIN:

5 I think there are four. The so-called charge-
6 off statement was added.

7 THE WITNESS:

8 Yeah, that's...

9 THE COURT:

10 So you're directing his attention to billing -
11 - closing billing statement date 2/25?

12 MR. MATZKIN:

13 Yes.

14 ***

15 BY MR. MATZKIN:

16 Q. Does that statement reflect a payment?

17 A. Yes, it does.

18 Q. On what date?

19 A. February 7th.

20 Q. And at the top that statement tells you
21 when the party's next statement would be due, doesn't
22 it?

23 A. Yes.

24 Q. And when is that?

25 A. 3/20 of 2002.

1 Q. 3/20 of 2002. Now I'm going to refer you
2 to the last statement. Is that the 3/20 statement
3 that's cut off?

4 A. Yes.

5 Q. Does it reflect the payment?

6 ***

7 THE COURT:

8 3/26 statement?

9 MR. MATZKIN:

10 Yes.

11 ***

12 BY MR. MATZKIN:

13 Q. Does that reflect a payment?

14 A. No it does not.

15 Q. Does it reflect a charge by the debtor?

16 A. Yes it does -- or, no, it does not, I'm
17 sorry, not by the debtor but it does reflect a charge.

18 Q. Let's go back to the one before where we
19 just were. If the next statement after the one with a
20 payment would be due March 20th, could this debtor have
21 defaulted prior to March 20th of '02?

22 ***

23 MR. RUBIN:

24 Objection. He doesn't have the knowledge,

25 Your Honor. He's -- he's asking a "could it

1 be." He doesn't work for Citibank. He
2 doesn't know -- he doesn't have this
3 knowledge. He has the knowledge of the debt
4 buyer and that's it.

5 MR. MATZKIN:

6 He has...

7 MR. RUBIN:

8 He's asking you to postulate or to
9 hypothesize...

10 THE COURT:

11 I'll sustain your objection to the question in
12 that form.

13 ***

14 BY MR. MATZKIN:

15 Q. Based upon your knowledge of the Citibank
16 contract which we just looked at and the statements in
17 your hand, if this debtor made a payment on February the
18 7th of '02, what is the earliest date that they would be
19 in default...

20 ***

21 MR. RUBIN:

22 Same objection, Your Honor.

23 ***

24 BY MR. MATZKIN:

25 Q. ...pursuant to the contract with which

1 you have knowledge, the statements that you have before
2 you and your experience with Citibank and in this
3 industry?

4 ***

5 MR. RUBIN:

6 The same objection, Your Honor. He doesn't
7 have experience with Citibank. He has
8 experience as a debt buyer.

9 THE WITNESS:

10 Actually Your Honor, if I may.

11 THE COURT:

12 Yes.

13 THE WITNESS:

14 I represented Citibank directly for over a
15 two-year period between 1997 and 1999.

16 MR. RUBIN:

17 Your Honor, that is not in response to any
18 question. He already testified he has the
19 experience of a debt buyer only, that's it.

20 MR. MATZKIN:

21 That's what you say. He just indicated he has
22 other experience.

23 ***

24 BY MR. MATZKIN:

25 Q. Describe for the Court that other

1 experience, Mr. Venditti.

2 ***

3 THE COURT:

4 Yes, overruled.

5 THE WITNESS:

6 While working at -- while working at MRS
7 Associates, I represented Citibank directly
8 for their -- as an outsource agency for them
9 directly and reported to them directly.

10 MR. RUBIN:

11 Your Honor, he just said he worked for MRS
12 Associates. That's not Citibank. He's not an
13 attorney, he can't represent Citi Ban. He
14 just worked for another debt buyer. I renew
15 my objection. He is a debt buyer.

16 MR. MATZKIN:

17 How does Counsel know who...

18 THE WITNESS:

19 It was not...

20 MR. MATZKIN:

21 ...MRS is?

22 MR. RUBIN:

23 MRS is a debt buyer.

24 THE COURT:

25 I don't know but it doesn't sound like

1 Citibank, I mean, just by its title.

2 THE WITNESS:

3 It...

4 THE COURT:

5 Wait for a question Mr. Venditti.

6 THE WITNESS:

7 I'm sorry, Your Honor.

8 MR. RUBIN:

9 MRS -- you're right Your Honor, MRS is not
10 Citibank, no matter what it is, whether it's a
11 plumber or anything. It happens to be a debt
12 buyer but -- I don't have the evidence it's a
13 debt buyer -- it's definitely not Citibank.
14 And so that is the objection.

15 THE COURT:

16 So what is your question Mr. Matzkin?

17 MR. MATZKIN:

18 My question is going to be to determine from
19 the documents before Your Honor and before
20 this witness what is the earliest possible
21 date that this debtor could be held in default
22 on her account. This has been his business
23 for many years.

24 THE COURT:

25 Based on his training, education and

1 experience?

2 MR. MATZKIN:

3 Yes, Your Honor.

4 MR. RUBIN:

5 But he can't interpret nor give...

6 THE COURT:

7 Well he can use dates on the -- from the
8 accounts I assume. These...

9 MR. MATZKIN:

10 And that's what I asked him to do.

11 THE COURT:

12 ...these billing statements. Overruled.

13 THE WITNESS:

14 3/20 of 2002.

15 ***

16 BY MR. MATZKIN:

17 Q. Do you have knowledge of when the
18 original suit in this case was filed?

19 A. I believe it was March 7 of 2006.

20 Q. And would that be more or less than four
21 years after March 20th of 2002?

22 A. Less than.

23 Q. Thank you, Mr. Venditti. Let's move on.

24 I'm going to ask you to take a look at
25 Plaintiff's 3.

1 ***

2 THE COURT:

3 P-3.

4 ***

5 BY MR. MATZKIN:

6 Q. Could you describe what this document is?

7 A. This is a Bill of Sale and Assignment and
8 Assumption Agreement for the purchase of accounts from
9 Citibank to NCO Capital.

10 Q. Have you ever seen this document or
11 documents like it before?

12 A. Yes.

13 Q. Over your years of experience, how many
14 would you say you've looked at?

15 A. Thousands.

16 Q. Indicating thousands of portfolio
17 purchase documents. Is that correct?

18 A. Correct.

19 Q. Okay. And the buyer in this case is who?

20 A. NCOP Capital, Incorporated.

21 Q. And who are they?

22 A. A subsidiary of NCO group.

23 Q. And what is their relationship to -- to
24 Citibank and to Commonwealth?

25 A. They buy accounts regularly from Citibank

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1 and we represent them third party, as well as we
2 purchase accounts from them.

3 Q. Were they the broker that you referred to
4 in an earlier answer?

5 A. Yes.

6 Q. Is it not -- is it -- excuse me. When
7 you purchase -- when Commonwealth purchases accounts,
8 what parameters are used, briefly, besides maybe dollar
9 amounts? Are there any geographic parameters?

10 A. Basically anything that we ask. I mean a
11 broker can typically break it all the way down to, you
12 know, I could buy all the accounts on Front Street if I
13 wanted to. They break them down typically by geographic
14 area, by state, by ZIP Code, by area code depending on
15 what I ask for.

16 Q. Based on your knowledge, why does
17 Commonwealth buy from this broker?

18 A. We have a longstanding relationship.

19 Q. What purpose does the broker serve in the
20 transaction for you?

21 A. I'm not sure that I understand the
22 question.

23 Q. Isn't it true that portfolios may be sold
24 with a million accounts covering the United States of
25 America?

1 A. Yes.

2 Q. And the broker breaks them down into...

3 A. I understand what you mean.

4 ***

5 MR. RUBIN:

6 Objection, objection. Leading.

7 THE COURT:

8 Sustained.

9 MR. MATZKIN:

10 I'll withdraw the question.

11 ***

12 BY MR. MATZKIN:

13 Q. Now Danny I'm going to ask you to refer
14 to Plaintiff's Exhibit 4. It consists of three sheets.
15 Will you describe the first sheet?

16 A. It's a Bill of Sale and Assignment and
17 Assumption Agreement for the sale of accounts from NCO
18 Capital Group to Commonwealth Financial Systems.

19 Q. And in your experience, how many of these
20 kinds of agreements have you seen or worked with?

21 A. Thousands.

22 Q. And you're familiar with them?

23 A. Yes.

24 Q. When you buy accounts, what is it that
25 you're buying and how is it delivered to you?

1 A. We buy a spread of accounts. It could be
2 ten accounts, it could be 5,000 accounts. The
3 information is transferred to us electronically from
4 whichever broker we obtain it from.

5 Q. The electronic information consists of
6 what?

7 A. All of the information contained in our
8 system; name, address, telephone number, original
9 account number, the balances, the associated interest
10 rates and any other applicable information that would be
11 needed.

12 Q. At the time of the transaction, is any
13 paper transmitted?

14 A. Not at the time of the transaction, other
15 than your actual original contract.

16 Q. And if you want additional documents, is
17 that where media comes in?

18 A. We request it.

19 Q. You request the media separately. Is
20 that correct?

21 A. Correct.

22 ***

23 MR. MATZKIN:

24 I'm going to show you this document. I'm
25 going to show him this, I'm not going to admit

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1 it. I'm showing him what it is.

2 ***

3 BY MR. MATZKIN:

4 Q. Mr. Venditti, I'm going to show you this
5 document.

6 A. Yes.

7 Q. What is it? I'm going to show it to His
8 Honor.

9 A. That is the debt spread.

10 Q. The debt spread.

11 A. Or a copy of it. It's a section.

12 Q. This is a page from...

13 ***

14 THE COURT:

15 This is page two of Exhibit 4.

16 MR. MATZKIN:

17 This is page -- no, you don't have this Judge.

18 THE COURT:

19 Oh.

20 MR. MATZKIN:

21 You don't have this because this contains a
22 group of -- this one page of 1,000 accounts or
23 so that were purchased and it has other
24 people's names and Social Security numbers. I
25 have redacted from this page the line that

1 refers to this Defendant and I'm showing you
2 from where it came. Under the law I can't
3 make this information part of the record.

4 THE COURT:

5 I understand.

6 ***

7 BY MR. MATZKIN:

8 Q. Now Mr. Venditti...

9 ***

10 THE COURT:

11 So page two of Exhibit 4 comes from that
12 document that has the name Smith referenced?

13 MR. MATZKIN:

14 That's the question that I was about to ask
15 Mr. Venditti.

16 THE COURT:

17 Well I can see that. Larry A. Smith, \$45, and
18 other information, address.

19 ***

20 BY MR. MATZKIN:

21 Q. You didn't bring with you the caption
22 heading?

23 A. I just actually realized that myself.

24 Q. Okay, well, let's take a look at the
25 first -- at the first of the two pages. What's the wide

1 field at the left?

2 A. That is the original account number.

3 Q. And the next field?

4 A. Social Security number.

5 Q. And the next field?

6 A. Default interest rate.

7 Q. And the next field?

8 A. The date the account was opened.

9 Q. In this case that was?

10 A. 11/1 of 1989.

11 Q. And what is the next date?

12 A. The date of last payment.

13 Q. And what is the significance of the \$45?

14 A. That is the last payment.

15 Q. And the next field?

16 A. The debtor's name.

17 Q. Go on.

18 A. Address, town, state, ZIP Code is on the
19 next page.

20 Q. Go on.

21 A. Home phone number, work phone number,
22 principal balance, balance with accrued interest and the
23 date of charge off, and then the final balance due and
24 owing.

25 Q. At the time of the transaction?

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1 A. Yes.

2 ***

3 THE COURT:

4 So that as of September 25th '02, she owed
5 \$4,215.01?

6 THE WITNESS:

7 That is correct.

8 ***

9 BY MR. MATZKIN:

10 Q. As a result of the purchase, are you
11 entitled to make any more charges on this account?

12 ***

13 MR. RUBIN:

14 Objection.

15 THE COURT:

16 Basis?

17 MR. RUBIN:

18 He's only entitled to provide what the
19 original contract provides. He's not
20 qualified to testify as to what the original
21 contract said. I mean...

22 THE COURT:

23 Are you saying he's giving a legal conclusion?

24 MR. RUBIN:

25 I'll withdraw the objection, thank you.

1 THE COURT:

2 Thank you.

3 MR. MATZKIN:

4 I'll repeat the question.

5 ***

6 BY MR. MATZKIN:

7 Q. As a result of your purchase of the
8 portfolio, are you -- can you charge anything to the
9 debtor?

10 A. We continue to accrue interest and any
11 applicable Court costs that we incur.

12 Q. And what interest rate do you generally
13 use?

14 A. Whatever...

15 ***

16 MR. RUBIN:

17 Objection. He can't testify as to what he
18 generally uses.

19 THE COURT:

20 Sustained.

21 ***

22 BY MR. MATZKIN:

23 Q. What interest rate was used on this
24 account?

25 A. I believe it should have been 23.99.

1 Q. Excuse me?

2 A. 23.99.

3 Q. Now Mr. Venditti I'm going to refer you
4 to Exhibit 5. What is that document?

5 A. It's an affidavit of assignment for a
6 specific account within a portfolio of accounts relating
7 to the individual account -- relating to original
8 account number 5424180521168465 under Larry A. Smith,
9 Social Security number ending 4995.

10 ***

11 THE COURT:

12 Why does it say that Mr. Smith at that time as
13 of July '04 owed \$2,780.04?

14 THE WITNESS:

15 That was the principal balance before the
16 accrued interest. Between July and September
17 the account would have accrued -- accrued
18 interest, late fees and over-the-limit charges
19 and things of that nature.

20 THE COURT:

21 So what's the date of the \$4,215 balance in P-
22 4, pages two and three.

23 THE WITNESS:

24 9/25/2002. They only list the actual
25 principal where the -- where the account

1 originated from in that -- on the affidavit.

2 THE COURT:

3 All right.

4 ***

5 BY MR. MATZKIN:

6 Q. Based upon your experience in the
7 industry and in Commonwealth, is Commonwealth the
8 rightful owner of Ms. Smith's account?

9 A. Yes.

10 Q. Did you have occasion to look at the
11 Complaint in this matter?

12 A. I did not actually see the actual
13 Complaint, no.

14 ***

15 MR. MATZKIN:

16 I'm sorry, Your Honor, this case has had a
17 rather long and tortured history and there's
18 entirely too much paper.

19 THE COURT:

20 Well based on a \$5,000 claim or so, you're
21 right. Both you lawyers are spending more
22 money than this case is worth.

23 MR. RUBIN:

24 Your Honor, I wholeheartedly agree.

25 MR. MATZKIN:

1 I'm showing you the Complaint.

2 THE COURT:

3 That would be, what, P-6?

4 MR. MATZKIN:

5 Just to refresh his recollection, Judge. I'm
6 not going to ask that it be admitted. It's in
7 the record.

8 THE COURT:

9 Okay.

10 ***

11 BY MR. MATZKIN:

12 Q. Take a look at the Complaint as to the
13 Defendant and the amount sought.

14 ***

15 THE COURT:

16 You mean in the last -- the "wherefore"
17 clause?

18 MR. MATZKIN:

19 Yes.

20 THE COURT:

21 Under Count 1 and 2 \$5,435.93, correct?

22 THE WITNESS:

23 Correct.

24 THE COURT:

25 With interest of 23.99 per annum?

1 THE WITNESS:

2 Yes, Your Honor.

3 MR. MATZKIN:

4 I have no further questions of this witness at
5 this time.

6 THE COURT:

7 All right, cross-examine Mr. Rubin.

8 ***

9 CROSS-EXAMINATION

10 BY MR. RUBIN:

11 Q. Mr. Venditti you're admittedly in the
12 business of debt buying, correct?

13 A. Yes.

14 Q. And you said that you obtained this
15 account from a broker, correct?

16 A. Correct.

17 Q. The broker was, in fact, NCOP Capital,
18 Inc?

19 A. Yes.

20 Q. Okay. NCOP Capital, Inc. is not
21 Citibank, correct?

22 A. No.

23 Q. Okay. In fact, they bought it from
24 another broker, correct?

25 A. No, they bought it from Citibank.

1 Q. Okay. Now you don't have any knowledge
2 as to Citibank's records, correct, what they did with
3 their records, when they had the account, you don't have
4 any knowledge of that?

5 A. Regarding this specific account?

6 Q. Yes.

7 A. No.

8 Q. And you also don't have any knowledge as
9 to what NCOP did with their records, correct?

10 A. I don't understand what you mean.

11 Q. You don't work for NCOP, correct?

12 A. No.

13 Q. Have you ever worked for NCOP?

14 A. No.

15 Q. Okay. So you don't know anything about
16 NCOP's how they keep their records or what their
17 business model is or anything about NCOP, you just
18 bought the debt from them. Isn't that right?

19 A. I bought the debt from them.

20 Q. Okay. NCOP uses computers?

21 A. Yes.

22 Q. Okay. And you use computers?

23 A. Yes.

24 Q. Does -- do you have any knowledge as to
25 how NCOP keeps their computers, how they backup their

1 computers?

2 A. I don't have intimate knowledge of NCOP's
3 IT department.

4 Q. Okay. So you don't know if the data that
5 NCOP had was protected, correct?

6 A. I would assume...

7 Q. I'm not asking you to assume, sir. I'm
8 asking you do you know?

9 A. May I finish?

10 Q. No, I asked you if you know if they
11 protected their data. Yes or no?

12 A. NCO is SAS-70 qualified so, yes, they
13 would protect their data.

14 Q. But you don't know, correct, because you
15 don't work for them?

16 ***

17 MR. MATZKIN:

18 Assuming facts not in evidence, Your Honor.
19 His question is kind of awkward.

20 THE COURT:

21 If he understands it, he can answer it. Does
22 he or doesn't he know how they back up their
23 data.

24 MR. MATZKIN:

25 Then I'll object to the whole line of

1 questioning as being irrelevant.

2 MR. RUBIN:

3 No it's not, Your Honor, because...

4 THE COURT:

5 Overruled. Overruled.

6 ***

7 BY MR. RUBIN:

8 Q. You can answer.

9 A. Could you repeat the question?

10 Q. Do you know how NCOP protects their data?

11 You have no knowledge as to how NCOP protects their
12 data, do you?

13 A. I have knowledge that NCOP is SAS-70
14 qualified. Therefore, they have passed a very rigorous
15 examination of their internal technology system in order
16 to protect their data. That is the extent of my...

17 Q. But you don't have any personal...

18 A. That is the extent of my knowledge.

19 Q. But you don't have any personal knowledge
20 as to that, correct?

21 A. That is the extent of my knowledge.

22 Q. Okay. You don't have any personal
23 knowledge as to whether NCOP was ever attacked by, let's
24 say, a computer virus. Correct?

25 A. Again, I don't work for NCOP.

1 Q. Right and you have no knowledge as to
2 whether or not NCOP backed up their data, correct?

3 A. Again they're SAS-70 qualified, so they
4 would have to back up their data.

5 Q. Okay, but you didn't ask them that
6 question when you brought the data. It was just a
7 computer file, right? You didn't ask if the data was
8 corrected or anything, did you?

9 A. Again they are SAS-70 qualified so their
10 data would have to be...

11 Q. I didn't ask you that question, sir.

12 A. ...protected.

13 Q. I asked you if you asked them that
14 question was the data protected?

15 A. The data -- I...

16 Q. I asked you...

17 A. ...take it under knowledge that the data
18 is protected.

19 Q. I asked you only, sir, if you asked them
20 that question was this data...

21 A. No, I didn't ask them that question.

22 Q. ...protected? Okay.

23 A. I wouldn't have to.

24 Q. So what happened in this case you just
25 got a tidal wave of data from NCOP, correct? And one of

1 the -- one of the accounts was Larry Smith. Isn't that
2 what happened in this case?

3 A. I received a spread electronically from
4 NCOP that contained Larry A. Smith's account.

5 Q. And you have no personal knowledge as to
6 whether or not that data was accurate or whether that
7 data corrupted at any time prior to you receiving it,
8 correct? You have no personal knowledge as to that?

9 A. No.

10 Q. Okay. As a matter of fact, you have no
11 personal knowledge as to whether or not when Citibank
12 transmitted the data that that data wasn't corrupted
13 when NCOP received it. Isn't that correct?

14 A. I don't have any personal knowledge.

15 Q. Okay. All right, now, you have no
16 personal knowledge as to whether or not the entries on
17 these alleged statements were made at or near the time
18 of the events. Isn't that correct? Personal knowledge,
19 sir.

20 A. Well other than the fact of being able to
21 read, I wasn't there. I mean I can determine...

22 Q. Thank you. You have no personal
23 knowledge as to whether or not this data was transmitted
24 to you from somebody with knowledge, do you?

25 A. No.

1 Q. Okay. And you have no personal knowledge
2 -- strike that question.

3 Isn't it true that this data could have been
4 corrupted in the path between it came from Citibank to
5 NCOP to you? Couldn't that have happened?

6 ***

7 MR. MATZKIN:

8 Objection, calls for speculation.

9 THE COURT:

10 Sustained.

11 MR. RUBIN:

12 If he knows.

13 THE COURT:

14 Do you want to rephrase your question, please?

15 ***

16 BY MR. RUBIN:

17 Q. Isn't it true that the data, like any
18 data, any computer data, could have been corrupted
19 between the time it went from Citibank to NCOP's
20 computers, it sat in NCOP's computers for awhile and
21 then it got transmitted to you. Couldn't data
22 corruption have happened?

23 A. No, I don't believe it could have.

24 Q. Who is Patricia Cobb?

25 A. Executive vice-president.

1 Q. And I assume this is a person with
2 knowledge, correct? You're a vice-president, correct?

3 ***

4 THE COURT:

5 Who did you ask, Richard who?

6 MR. RUBIN:

7 Patricia Cobb.

8 THE WITNESS:

9 Patricia Cobb.

10 THE COURT:

11 Patricia Cobb, she took the verification to
12 the Complaint.

13 MR. RUBIN:

14 Right.

15

16 ***

17 BY MR. RUBIN:

18 Q. And she is, obviously, a higher up
19 executive?

20 A. She's my boss.

21 Q. She's your boss, okay. So she at least
22 has the knowledge that you have, correct? And she
23 probably has more knowledge than you do, correct?

24 A. Yes, she's also in-house Counsel.

25 Q. Okay. Now, I'm sorry, do you have a copy

1 of the Complaint in front of you?

2 A. No, I do not.

3 ***

4 MR. MATZKIN:

5 I'll give it to him.

6 ***

7 BY MR. RUBIN:

8 Q. Do you know Patricia Cobb to be a
9 truthful person?

10 A. Absolutely.

11 Q. Is she thorough?

12 A. Absolutely.

13 Q. Okay. Can you read paragraph four of
14 your company's Complaint?

15 A. "Defendant continuously used his or her
16 credit card and made periodic payments until his or her
17 default on or about February 7th of 2002. Copies of
18 monthly billing statements demonstrating balances are
19 attached hereto as Exhibit A."

20 Q. Okay. Would you also read paragraph
21 five, please?

22 A. "Defendant defaulted on his or her credit
23 card agreement having made his or her last payment
24 during January 2002. A true and correct copy of said
25 card holder agreement is attached hereto and made part

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1 hereof as Exhibit B."

2 Q. All right, these are internally
3 consistent, correct? If there was a last payment in
4 January, there would have been in default in February.
5 Correct? That's internally consistent, isn't it?

6 A. I don't understand what you mean
7 "internally consistent."

8 Q. In other words they're not contradictory,
9 right? I mean the paragraphs are consistent with each
10 other. A default -- last payment in January, a default
11 in February. What could be more consistent than that,
12 correct?

13 A. If that was the case, yes.

14 Q. Okay, well, Patricia Cobb is trustworthy,
15 right? You said it.

16 A. [Nodding head yes.]

17 Q. Okay and she's your boss. Now, you
18 attached to your Complaint a copy of the card holder
19 agreement, correct?

20 ***

21 THE COURT:

22 To the Complaint you're referring to?

23 MR. RUBIN:

24 Yes to the Complaint, a copy of the card
25 holder agreement.

1 THE COURT:

2 Is that the one where the statement closing
3 date is 2/25/02?

4 THE WITNESS:

5 No, those are the actual billing statements,
6 Your Honor.

7 MR. RUBIN:

8 It says Citibank -- I'm sorry, Your Honor. It
9 says Citibank card agreement. It's attached
10 to the Complaint.

11 THE COURT:

12 That's P-1.

13 MR. RUBIN:

14 Yes.

15 THE COURT:

16 Okay.

17 THE WITNESS:

18 That's correct.

19 ***

20 BY MR. RUBIN:

21 Q. What's the date of this agreement?

22 A. The last revision appears to be 7/97.

23 Q. All right, it looks like they're revising
24 them every year or so?

25 A. Citibank didn't revise them every year,

1 no.

2 ***

3 THE COURT:

4 What's the last revision date? What's the
5 last...

6 THE WITNESS:

7 This last revision is 7/97, Your Honor.

8 THE COURT:

9 7/97?

10 THE WITNESS:

11 Yes.

12 ***

13 BY MR. RUBIN:

14 Q. During the five years that -- from the
15 period of time of default until the period -- until when
16 this agreement was dated, there could have been
17 revisions by Citibank. Isn't that correct?

18 A. I believe the last revision after this
19 was in 1999 and the last revision after that was in
20 2004.

21 Q. Okay. So there was a revision after
22 this?

23 A. In 1999.

24 Q. Okay. So this isn't even the agreement
25 that binds the Defendant. Isn't that correct?

1 A. This is the...

2 Q. This is not the agreement that's
3 applicable to the Defendant, is it, because there was a
4 revision after this.

5 A. The...

6 Q. Correct?

7 A. The revision in 1999...

8 Q. No, sir, I just asked you is this the
9 agreement that binds the Defendant?

10 A. Yes.

11 Q. Okay, but there was a revision in '99,
12 right?

13 A. Yes.

14 Q. Okay. So this is not the agreement
15 because there was a revision. Isn't that correct?

16 A. I believe that that revision...

17 Q. Sir, I didn't ask you what you believe.

18 ***

19 MR. MATZKIN:

20 He's -- let him answer the question.

21 THE COURT:

22 Let him - listen to the question and then try
23 to answer his specific question, Mr. Venditti.

24 ***

25 BY MR. RUBIN:

1 Q. I said to you is it not true that this
2 agreement is not the agreement between the Defendant and
3 the Plaintiff because there was a revision and you don't
4 have it. Isn't that true?

5 ***

6 THE COURT:

7 He doesn't have the revision you mean?

8 MR. RUBIN:

9 Right, exactly.

10 THE WITNESS:

11 Actually I don't believe that this Citibank
12 program was part of that revision.

13 ***

14 BY MR. RUBIN:

15 Q. Sir I didn't ask you what you believe.
16 Just answer the question.

17 A. This Citibank Platinum Select program was
18 not part of that revision.

19 Q. You don't work for Citibank; you don't
20 have any personal knowledge as to that?

21 A. I have Citibank credit cards.

22 Q. So do I.

23 A. Okay. And I keep on top of it.

24 Q. All right, now, let's look at the
25 interest rate on this agreement, which we agree is not

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1 even the interest rate that is between the Defendant and
2 the Plaintiff. What is the interest rate say on your
3 exhibit?

4 ***

5 MR. MATZKIN:

6 That's a total -- I object. That's a total
7 mischaracterization.

8 MR. RUBIN:

9 I'll withdraw the question.

10 THE COURT:

11 Sustained.

12 MR. RUBIN:

13 I'll withdraw the question.

14 ***

15 BY MR. RUBIN:

16 Q. What is the interest rate? I think Mr.
17 Matzkin marked the interest rate.

18 A. Where are we looking at?

19 Q. It says -- your own Counsel marked
20 "interest rate" on page two of the agreement.

21 A. Of the agreement?

22 Q. Um-hum.

23 ***

24 THE COURT:

25 It has the words "Interest rate" written in

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1 the margin?

2 MR. RUBIN:

3 Right, the words "interest rate."

4 THE WITNESS:

5 "If you fail to meet the agreements of this or
6 any other Citibank card agreement, we may
7 immediately increase your variable annual
8 percentage rate, including any introductory or
9 promotional rate on any existing purchase,
10 cash advance, balances or higher rate of 12.9
11 plus the prime rate as determined above. This
12 higher rate will not be lower than 19.8
13 percent."

14 ***

15 BY MR. RUBIN:

16 Q. Okay.

17 A. Would you like me to continue?

18 Q. There's no mention in here about anything
19 about 23.9 is there?

20 A. No, it says prime plus 12.9 not lower
21 than 19.8.

22 Q. There's no mention anything in here about
23 that interest rate, is there?

24 A. No.

25 ***

1 THE COURT:

2 In fact, the maximum rate is 19.8, isn't it?

3 THE WITNESS:

4 No, not lower than 19.8 Your Honor.

5 THE COURT:

6 So it's not lower than 19...

7 MR. RUBIN:

8 Well...

9 THE WITNESS:

10 That's the minimum in the event of default.

11 ***

12 BY MR. RUBIN:

13 Q. But, sir, you don't have any knowledge as
14 to what that interest rate is. You just have a
15 statement that says...

16 A. I don't...

17 Q. ...not lower than 19.8?

18 A. I don't recall what the prime interest
19 rate was in 2002.

20 Q. All right, thank you. There's no mention
21 in this agreement as to 20 percent Counsel fees is
22 there?

23 A. Pardon?

24 Q. There is no mention in this agreement as
25 to 20 percent Counsel fees which you're also claiming in

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1 the Complaint is there?

2 A. I believe it's reasonable Court costs and
3 attorney fees is what the agreement said.

4 ***

5 THE COURT:

6 Where does it say that?

7 THE WITNESS:

8 Bear with me, Your Honor.

9 THE COURT:

10 Take your time.

11 THE WITNESS:

12 It's under "Collection costs."

13 THE COURT:

14 Where is this?

15 THE WITNESS:

16 "If we have to refer...

17 THE COURT:

18 Where is this? Oh, on the last page?

19 THE WITNESS:

20 Yes. It states, "If we have to refer
21 collection on your account to a lawyer who is
22 not a salaried employee, to the extent
23 permitted by law you will have to pay our
24 attorneys fees plus Court costs and any other
25 fees. If we sue you to collect and we win, we

1 will pay you -- or you win we will pay your
2 reasonable legal fees and Court costs."

3 ***

4 BY MR. RUBIN:

5 Q. There's no mention about 20 percent is
6 there?

7 A. I just read what it said.

8 Q. Okay. Now would you agree that all the
9 records that you got, not through Citibank, through
10 NCOP, would you agree that those are secondary sources?

11 A. I don't understand what you mean by
12 "secondary."

13 Q. They're not primary sources. You didn't
14 get them from Citibank. They're secondary sources. You
15 got them from NCOP, correct?

16 A. We obtained the records from NCOP who
17 obtained the records from Citibank.

18 Q. Right. These are not verified records,
19 correct?

20 A. There is due diligence done on them.

21 Q. I asked you are they verified or is there
22 an affidavit with the records?

23 A. Yes.

24 Q. You didn't bring one with you today, did
25 you?

1 A. The affidavit I believe is an exhibit.

2 Q. I didn't see an affidavit in the
3 exhibits. Where are you referring to, sir?

4 A. The affidavit of assignment and
5 Assumption Agreement.

6 Q. Can you enlighten us?

7 ***

8 THE COURT:

9 That's P-3, I think.

10 MR. MATZKIN:

11 I think it's P-5, Judge.

12 THE COURT:

13 P-3 and P-4.

14 THE WITNESS:

15 Exhibit 5.

16 MR. MATZKIN:

17 3, 4 and 5.

18 THE COURT:

19 P-3, 4 and 5. Well, P-3 and 4. P-5 is just

20 a...

21 THE WITNESS:

22 That's a chain of title.

23 THE COURT:

24 Excuse me?

25 THE WITNESS:

1 All three exhibits establish chain of title.

2 MR. RUBIN:

3 All right, I'll withdraw the question.

4 All right, that's all the questions I have.

5 THE COURT:

6 Any redirect?

7 MR. MATZKIN:

8 Yes, I'll try to be very brief Your Honor.

9 ***

10 REDIRECT EXAMINATION

11 BY MR. MATZKIN:

12 Q. Mr. Venditti, I would like you to look
13 again at the statement cutoff on February 25th of '02,
14 the one that reflects the last payment.

15 A. Yes.

16 Q. And I would like you to compare that
17 information with the line of the spread.

18 ***

19 MR. RUBIN:

20 Objection. This has...

21 ***

22 BY MR. MATZKIN:

23 Q. Isn't it true that they both say that the
24 date of the payment...

25 ***

1 THE COURT:

2 Wait a minute, what?

3 MR. RUBIN:

4 This has already been -- this has already been
5 testified to. This is not redirect. I mean
6 he can only talk about things that I raised in
7 direct -- in cross-examination.

8 MR. MATZKIN:

9 Well you're raising that there was some sort
10 of computer glitches and errors and so forth.
11 I have a right to rebut that there wasn't any.

12 THE COURT:

13 Overruled. I'm hearing this non-jury, let me
14 hear it for what it's worth.

15 ***

16 BY MR. MATZKIN:

17 Q. Don't they both say the last payment was
18 February the 7th of '02?

19 A. Yeah.

20 ***

21 THE COURT:

22 What are you referring to now, sir, P-2?

23 THE WITNESS:

24 Between -- between the actual statement, Your
25 Honor, and the redacted copy.

1 THE COURT:

2 Comparing P-2 the statement that says...

3 THE WITNESS:

4 With what the actual spread says.

5 THE COURT:

6 I mean the actual statement that says the
7 closing date, or what's that thing?

8 THE WITNESS:

9 The last payment.

10 THE COURT:

11 2/25/02?

12 THE WITNESS:

13 Yes.

14 MR. MATZKIN:

15 Your Honor, that reflects the date of the last
16 payment as February the 7th and the amount was
17 \$45.

18 THE COURT:

19 Right.

20 ***

21 BY MR. MATZKIN:

22 Q. Is that information exactly the same as
23 what is on the spreadsheet?

24 A. Yes.

25 ***

1 THE COURT:

2 And that would be page two of P-4?

3 MR. MATZKIN:

4 Correct.

5 THE WITNESS:

6 Yes.

7 ***

8 BY MR. MATZKIN:

9 Q. Now by way of a little bit of further
10 clarification, if you know, when Citi prints this media
11 for shipment to you, how do they -- do you have any idea
12 of how they...

13 ***

14 MR. RUBIN:

15 Objection. It's been established he doesn't
16 know this.

17 THE COURT:

18 I think that's a fair inference, but
19 overruled.

20 ***

21 BY MR. MATZKIN:

22 Q. Do you have any idea how they -- where
23 they get it from?

24 A. From their records.

25 Q. Okay. And when they print out the

1 statement, they're printing out a new statement?

2 A. They don't actually print it, they send
3 it electronically and we print it.

4 Q. Send it electronically. Take a look at
5 the statement that we're looking at.

6 A. Okay.

7 Q. In the upper right there are several
8 fields of information. One of them contains a date.

9 ***

10 MR. MATZKIN:

11 I'm right up here, Judge.

12 THE WITNESS:

13 8/17 of 2006, is that what you're talking
14 about?

15 MR. MATZKIN:

16 Yes I am.

17 THE COURT:

18 What exhibit is that?

19 ***

20 BY MR. MATZKIN:

21 Q. Do you have any idea what that date is?

22 ***

23 THE COURT:

24 It's part of P-2.

25 MR. MATZKIN:

1 Right here.

2 THE WITNESS:

3 The only thing I...

4 THE COURT:

5 The statement's closing date of 2/25. I'm
6 sorry, what's your answer? What's this
7 8/17/06 refer to, if you know?

8 THE WITNESS:

9 I don't know exactly. The only thing I can
10 infer that...

11 MR. RUBIN:

12 I object. If he doesn't know...

13 THE COURT:

14 If he doesn't know, he doesn't know.

15 MR. MATZKIN:

16 But he has knowledge of how the paperwork
17 moves...

18 THE COURT:

19 No he doesn't, he was about to infer
20 something. So by definition he doesn't know.

21 MR. MATZKIN:

22 I'll withdraw the question.

23 ***

24 BY MR. MATZKIN:

25 Q. Do you recall when SAS-70 came into

1 existence?

2 ***

3 MR. RUBIN:

4 Objection.

5 THE COURT:

6 Excuse me, what's SASSIS?

7 MR. MATZKIN:

8 That's what he was referring to in his
9 responses to Mr. Rubin when he asked questions
10 about the date of integrity.

11 MR. RUBIN:

12 Your Honor now he's going to testify as to
13 computer technical safety knowledge. I mean
14 he's a debt buyer. He doesn't know anything
15 about...

16 MR. MATZKIN:

17 You asked -- you opened the door, sir. You
18 asked him the question.

19 THE COURT:

20 I don't even know what you're talking about?
21 What's NASSIS?

22 THE WITNESS:

23 SAS, S-A-S.

24 MR. MATZKIN:

25 SAS, S-A-S.

1 THE COURT:

2 That's a Swedish airway, isn't it, from Oslo?

3 MR. RUBIN:

4 Yes.

5 THE COURT:

6 Or Norway. I guess that's Norway, not Sweden.

7 Excuse me.

8 ***

9 BY MR. MATZKIN:

10 Q. Do you know what SAS-70 is?

11 ***

12 THE COURT:

13 SAS-70.

14 THE WITNESS:

15 Yes.

16 ***

17 BY MR. MATZKIN:

18 Q. What is it?

19 A. SAS-70 is a -- I'm trying to think of the
20 best way to phrase it -- is a very in depth and
21 technological requirement to pass. It is a -- it is a
22 test on multiple levels and multiple fields of a
23 corporate computer system to ensure data integrity in
24 all aspects; data protection, virus corruption
25 protection and everything else. And it is...

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MR. RUBIN:

Your Honor I would object to the relevancy since he's going to testify that another company complied with this SAS-70. He's not even qualified to interpret SAS-70 because he hasn't laid a foundation. But even if he was, how could he testify as to who complies with SAS-70?

THE COURT:

Even if he knows what it is, what's the relevance? I mean assuming he knows what it is, does he know Citibank did it or complied?

MR. RUBIN:

He doesn't know anything about Citibank. He doesn't know anything about NCOP. He knows about Commonwealth. He's the vice-president of Commonwealth Financial.

MR. MATZKIN:

I'm trying to maintain my decorum you're your ridiculous comments, Mr. Rubin, and I'm getting a little tired of it.

MR. RUBIN:

Your Honor, I...

MR. MATZKIN:

1 He is the vice-president of a debt buyer that
2 buys millions and millions of dollars of debt.

3 MR. RUBIN:

4 This is totally unnecessary these...

5 MR. MATZKIN:

6 He knows the business. He knows what he's
7 talking about. This is a body of law that
8 companies must comply with or you can't do
9 business electronically. Period. And what he
10 said was he knows that the people they buy
11 from have complied and passed the SAS-70 test.

12 THE COURT:

13 How does he know that?

14 THE WITNESS:

15 It's one of our requirements.

16 MR. MATZKIN:

17 Because they wouldn't have bought it. It's a
18 matter of due diligence.

19 MR. RUBIN:

20 It's a bootstrap argument, Your Honor, "I
21 wouldn't have done if they did not comply."

22 THE COURT:

23 I'll take it for what it's worth. I don't
24 think he personally knows within the very
25 technical sense.

1 MR. MATZKIN:

2 I have no further questions.

3 THE COURT:

4 Thank you.

5 MR. MATZKIN:

6 He doesn't -- he doesn't have to, Judge. He
7 bought the debt. He keeps referring to him as
8 a debt buyer. He's merely an employee. They
9 bought the debt with the knowledge and the
10 understanding that the seller was SAS-70
11 compliant, meaning their computer test has
12 been passed.

13 MR. RUBIN:

14 Because they...

15 MR. MATZKIN:

16 I have no further questions.

17 THE COURT:

18 Well he doesn't know, you know, how often do
19 they give a test, how long does it last, when
20 did they last pass the test, when were they
21 last inspected, when did the last SAS people
22 come in, you know, all that kind of thing. I
23 don't know anything about SAS. I can barely
24 turn my computer on and write my grandchildren
25 emails. So don't expect me to, you know, be

1 knowledgeable in that area.

2 MR. MATZKIN:

3 I have no further questions.

4 THE COURT:

5 Okay, anything further?

6 MR. RUBIN:

7 No further questions.

8 THE COURT:

9 Thanks Mr. Venditti.

10 THE WITNESS:

11 Thank you, Your Honor.

12 THE COURT:

13 Thanks for coming down.

14 MR. MATZKIN:

15 I would ask for admission of P-1 through P-5.

16 THE COURT:

17 P-1 through P-5, any objection?

18 MR. RUBIN:

19 Yes, Your Honor, I object. They are not
20 qualified under 803(6). He has not said that
21 they were made at or near the time. He has
22 not said that's their information transmitted
23 by a person with knowledge. The agreement
24 that he wants to admit is admittedly not the
25 agreement between the Plaintiff and the

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1 Defendant. He said so. There's nothing -- he
2 doesn't know how the records were maintained
3 before they got to him. There is nothing but
4 unreliability in this case. It is not...

5 THE COURT:

6 Mr. Matzkin don't you need to have a custodian
7 or other qualified witness, which seems to me
8 would be from Citibank to -- or Citi
9 Platinum...

10 MR. RUBIN:

11 Yes.

12 THE COURT:

13 ...Citibank to comply with 803(6), the records
14 exception to the hearsay rule? Because data
15 compilation in that rule does include,
16 according to the comments, includes records in
17 any form and it encompasses computerized data
18 storage. This gentlemen as knowledgeable as
19 he is with his work with Commonwealth
20 Financial Systems, doesn't work -- wasn't
21 employed by Citi Platinum regarding this
22 particular account it seems to me. And I
23 question whether you have the testimony of a
24 custodian or other qualified witnesses --
25 witness to indicate the trustworthiness of

1 these documents.

2 MR. MATZKIN:

3 Your Honor if I may respond, and I have to
4 respond on two levels. First of all, to
5 respond to your specific question, there is
6 case law -- I just looked for it. Regretfully
7 I don't have the cases with me, but there is a
8 large body of case law both in the
9 Commonwealth and in the country that adopts
10 more of the -- that adopts the federal
11 business exception standard and expands it to
12 say that in transactions like this, when you
13 get business records as part of the
14 transaction those records become your records.
15 If they're his records and he has knowledge of
16 them, and he does, he can testify to them.

17 Now on a practical level, if that were
18 true, Your Honor, then the entire debt
19 business -- debt collection business would
20 probably cease to exist because Citibank would
21 never send somebody here. They have people --
22 I'm sure Your Honor is aware of the hundreds
23 of thousands of cases, probably thousands in
24 this jurisdiction alone let alone across the
25 country, to have to produce a witness that

1 knows something, someone knowledgeable from
2 2004 or 2002. That's why the documents are
3 here. The documents speak for themselves.

4 THE COURT:

5 Isn't that why they charge these incredible
6 interest rates of 19 and 23 percent so they
7 can send their attorneys all over the country
8 if they want to collect these debts?

9 MR. MATZKIN:

10 No that's...

11 THE COURT:

12 I mean that interest rate is unbelievable so
13 it's a cost of doing business. If they want
14 to collect and spend the thousands of dollars
15 they've already paid you to collect a \$5,000
16 claim, that's their choice. It's a free
17 country.

18 MR. MATZKIN:

19 First of all, Judge, they don't pay me a penny
20 unless I collect a penny. This business is a
21 highly contingent fee. Second of all, that's
22 why they sell the debt. They only -- actually
23 Citibank has a minimal debt collection
24 business. When they deem something that
25 they're willing to write it off, they turn it

1 over to one of their brokers, NCOP, Unifund,
2 who packages them up and then sells them to
3 people like Commonwealth who then tries to
4 collect it. Commonwealth is a collection
5 agency.

6 THE COURT:

7 But as a practical matter in this day of
8 computers, which is sort of messing up all
9 kinds of discovery and document production and
10 so forth, it's reasonable to assume I suppose
11 that these are, you know, accurate transfers
12 from these various purchasers of debt
13 collection. On the other hand, you know, I've
14 got to follow the law to determine whether
15 these -- whether there's sufficient proof that
16 this was kept in the ordinary course of
17 business and a custodian is able to establish
18 that.

19 MR. MATZKIN:

20 And I established that he is knowledgeable of
21 these records. Every piece of paper that I'm
22 asking him about, he's knowledgeable about.

23 THE COURT:

24 Well he's knowledgeable how he got it and what
25 he does with it when he gets it, but he didn't

1 -- couldn't know, didn't know what Citibank
2 does.

3 MR. MATZKIN:

4 And the case law says...

5 THE COURT:

6 He thinks he knows, but he doesn't know
7 because he doesn't work there.

8 MR. MATZKIN:

9 The case law said that he got it based upon
10 the representations of ultimately from
11 Citibank and, therefore, he has the right to
12 accept it as the output...

13 THE COURT:

14 Well, then, it's...

15 MR. MATZKIN:

16 ...of Citibank.

17 THE COURT:

18 ...well, then, it's double hearsay.

19 MR. MATZKIN:

20 Well, again, whatever it is...

21 THE COURT:

22 Again, you know, you follow the hearsay
23 exception, if what you just said is accurate
24 and I mean I've got no reason to disagree with
25 you, but now you're putting hearsay on the

1 hearsay.

2 MR. MATZKIN:

3 One of them may be in there under the business
4 record exception to hearsay, Judge.

5 MR. RUBIN:

6 That's 803(6). That's the one we're talking
7 about. That's exactly the thing...

8 MR. MATZKIN:

9 It's certainly in Obom (ph) on Evidence, which
10 is the source that I use.

11 THE COURT:

12 Yeah, but what's Ulman say? I'm sure -- Mr.
13 Obom (ph) you mean?

14 MR. MATZKIN:

15 Obom.

16 THE COURT:

17 I've been on seminars with him. I mean I know
18 the man.

19 MR. MATZKIN:

20 He has categorized -- he has had several cases
21 that stand for the fact that the records I
22 showed you qualify as exceptions under the
23 hearsay rule and are admitted under the
24 business document rule.

25 THE COURT:

1 And I'm sure followed up with as long as it's
2 a qualified testimony of a custodian or other
3 qualified witness. I mean that's what the law
4 -- I'm sure that's what those cases probably
5 say. I'm just not sure that Mr. Venditti as
6 knowledgeable as he is about Commonwealth
7 Financial Systems, Inc is the right person to
8 establish the Citibank records. But let's go
9 on. I'll give you a chance to submit those
10 cases to me after the hearing if you wish to,
11 Mr. Matzkin.

12 MR. MATZKIN:

13 Since Your Honor believes it to be an issue, I
14 absolutely would.

15 THE COURT:

16 Okay, well, I'll give you that opportunity
17 because I'd be interested to see what the
18 cases that Professor Obom cites have a factual
19 pattern consistent with this one. But let's
20 move on -- let's move on from that issue.

21 Assuming that these records come in and
22 so forth, my one question to you Mr. Rubin is
23 that since this document P -- or part of P-2
24 which was the closing statement of 2/25/02
25 which states above that that payment must be

1 received by 1 o'clock local time on 3/20/02.
2 In other words, they gave Ms. -- Defendant
3 Smith until 3/20 to make payment. They -- by
4 all agreement, I think of Counsel, the
5 complaint was filed on March 7, '06, which
6 would arguably be within the statute of
7 limitations.

8 MR. RUBIN:

9 Well, Your Honor, that's the problem we have
10 here. We have an unchallenged statement by
11 somebody who has more knowledge than this
12 witness that that is not true. There's an
13 internal inconsistency between...

14 THE COURT:

15 The Complaint?

16 MR. RUBIN:

17 ...the Complaint and the verified statement of
18 this witness's boss and his testimony.

19 THE COURT:

20 Well you're saying -- so paragraphs four and
21 five of the Complaint says she defaulted on
22 February 7...

23 MR. RUBIN:

24 Right and that's...

25 THE COURT:

1 ...and then made her last -- she made her last
2 payment of January '02.

3 MR. RUBIN:

4 Up until -- right up until this very moment.

5 THE COURT:

6 So you're saying the statute commenced
7 February 7, '02, I guess. That's the date of
8 her default.

9 MR. RUBIN:

10 On the date of default. That is
11 uncontradicted. There hasn't even been a
12 motion to -- not even to this second has there
13 been a motion to correct that, Your Honor.
14 That time is long past because the witness
15 testified that the person who made this
16 statement has more knowledge than he has.

17 THE COURT:

18 Well, also that she is truthful and thorough.

19 MR. RUBIN:

20 Right. Can we just close our eyes to this?
21 Is this a lie? Is this -- who's telling --
22 who's telling a lie here?

23 MR. MATZKIN:

24 I don't know that anybody is trying to
25 close...

1 MR. RUBIN:

2 Excuse me, Mr. Matzkin. Is Ms. Cobb telling a
3 lie? Or is this witness telling a lie
4 because...

5 MR. MATZKIN:

6 Only you're telling a lie, Mr. Rubin, only
7 you.

8 MR. RUBIN:

9 ...because they both...

10 THE COURT:

11 Well, you don't need to say lies.

12 MR. RUBIN:

13 Well, whatever.

14 THE COURT:

15 If somebody's memory is mistaken, they've
16 misstated the facts. I mean there's a
17 contradiction here.

18 MR. RUBIN:

19 Right.

20 THE COURT:

21 She under oath says that -- what she says and
22 attested to in paragraphs four and five of the
23 Complaint. There's now an internal
24 inconsistency because in the select card --
25 what do you call these -- billing statements

1 it says that you've got until March 20 to pay
2 this outstanding "defaulted" account. So now
3 which one do I use?

4 MR. MATZKIN:

5 Judge I submit...

6 THE COURT:

7 If I go one way, you win. If I go another one
8 you, Mr. Defendant, win.

9 MR. MATZKIN:

10 I would certainly submit that the statement is
11 what is binding on everybody. The Complaint
12 was prepared in my office, later verified by
13 Ms. Cobb. I can only say that back in
14 December...

15 THE COURT:

16 Well she may have hoisted herself by her own
17 petard.

18 MR. MATZKIN:

19 Well...

20 THE COURT:

21 I mean inadvertently. I'm sure she's not a
22 liar.

23 MR. MATZKIN:

24 No she's not a liar.

25 THE COURT:

1 I mean she made a mistake; she read the
2 records wrong or whatever. I mean, I don't
3 know. It says what it says.

4 MR. MATZKIN:

5 And I signed the...

6 THE COURT:

7 What she says is true and correct to the best
8 of her knowledge, information and belief.

9 MR. MATZKIN:

10 I signed the Complaint, Judge, and...

11 THE COURT:

12 Well you're not -- you're not taking the
13 affidavit.

14 MR. MATZKIN:

15 No.

16 THE COURT:

17 I mean I'm sure you're representing to the
18 Court you're not trying to hoodwink the Court.
19 You're not in violation of Rule -- well the
20 old equivalent of Rule 11 of the federal
21 rules, whatever the equivalent is in
22 Pennsylvania.

23 MR. RUBIN:

24 No I'm not saying that he did any...

25 THE COURT:

1 And Mr...

2 MR. MATZKIN:

3 I can only tell you that I may -- perhaps I
4 made an error. Most likely I made an error in
5 inserting the January date for the statement
6 date when obviously it's a February statement.
7 And that's where the error was. And there is
8 something in federal law called a bona fide
9 error defense. When you're processing
10 hundreds of these things as my office does as
11 long as we have systems in place to prevent
12 it, and we do, occasionally something happens.

13 MR. RUBIN:

14 I'm not saying that he did anything wrong.

15 THE COURT:

16 We're not casting dispersions on you Mr.
17 Matzkin in any way, shape or form.

18 MR. MATZKIN:

19 But then there's nothing wrong...

20 THE COURT:

21 I have -- I have two documents here from your
22 client which contradict -- or are internally
23 inconsistent, totally contradictory in terms
24 of the statute of limitations. One falls on
25 one side of the statute and one falls on the

1 other.

2 MR. MATZKIN:

3 And I would submit that if you look at the
4 document that carries the most weight, what
5 carries the most weight with me would be the
6 Citibank statement.

7 THE COURT:

8 Gee, why would I think you'd say that?

9 MR. RUBIN:

10 Your Honor what carries the most -- perhaps
11 Mrs. Cobb didn't correct the Complaint because
12 she thought that was correct. She had three
13 years to do it. She didn't do it.

14 MR. MATZKIN:

15 I think that this is still a -- while we get
16 sometimes more toward -- it's a fact-pleading
17 state. We've pled facts. One of the facts
18 appears to be slightly in error.

19 THE COURT:

20 Well you knew he was raising -- you knew he
21 was raising the statute of limitations for the
22 last three years, or whatever this timeframe
23 has been.

24 MR. RUBIN:

25 Yes, three years.

1 MR. MATZKIN:

2 And I firmly believe he's been wrong for the
3 last three years. And I still believe he's
4 wrong.

5 THE COURT:

6 Yeah, well, in order to not be wrong you
7 should have filed -- maybe filed a Motion to
8 Amend the Complaint to reflect the billing
9 statement dates. That's my conundrum.

10 MR. RUBIN:

11 Maybe Ms. Cobb was right because she didn't
12 change it. That's -- I mean Ms. Cobb is an
13 attorney, too. She's an attorney.

14 THE COURT:

15 Okay, I understand.

16 MR. MATZKIN:

17 I think that Mr. Rubin is groping for any
18 straw that he can.

19 THE COURT:

20 No, he's defending his client like you would
21 in terms of which way to interpret...

22 MR. MATZKIN:

23 And I admire his...

24 THE COURT:

25 You've done the same thing. I mean I'm not

1 saying you're groping at straws. You're
2 trying to represent your client the best you
3 can, you're now faced with an internal
4 conflict, and he's doing the same thing for
5 his client.

6 MR. MATZKIN:

7 Well -- and I know it is self-serving, but who
8 would you believe? Would you believe a lawyer
9 or would you believe the document? You would
10 believe the document itself, even though I'm a
11 lawyer.

12 MR. RUBIN:

13 Documents don't...

14 THE COURT:

15 Well, I don't know why I should -- I don't
16 know what the law is on that why I should
17 believe a lawyer over a -- over a document. I
18 mean...

19 MR. MATZKIN:

20 Because...

21 THE COURT:

22 ...one interpretation would be that the lawyer
23 is right and this billing statement is wrong.

24 MR. MATZKIN:

25 Because the billing statement is correct

1 because all the other documents have the same
2 information.

3 THE COURT:

4 And her information that she's attesting to is
5 under oath. This billing statement isn't
6 under oath. It's generated in this -- is this
7 part of the SAS-70 problem -- or program,
8 whatever? I mean it's generated with hundreds
9 of thousands of documents that these people
10 deal with, which I appreciate.

11 Well I think I understand the problem. I
12 mean do you have anything more to add...

13 MR. RUBIN:

14 I think...

15 THE COURT:

16 ...to help me in making a decision here? I'm
17 going to give you a chance Mr. Matzkin to send
18 me those cases. If you can -- fax them to me
19 or give me the cite. Well if they're federal
20 -- if they're Pennsylvania cites Atlantic 2nd
21 you could just fax them to me or call me with
22 the citation.

23 MR. MATZKIN:

24 I think they may be both. One way or the
25 other can it be informal, by a letter or what

1 not?

2 THE COURT:

3 Oh, yeah, just send me the cases.

4 MR. MATZKIN:

5 Okay. And I'll get them to you also Mr.
6 Rubin.

7 THE COURT:

8 I know what your argument is. Just give me --
9 as I say call when you get a chance, sometime
10 today hopefully.

11 MR. MATZKIN:

12 I'll try to do it when I return to my office
13 today.

14 THE COURT:

15 Okay. Call me with the cites and we can pull
16 them up on the computer or else I may have the
17 Atlantic cites if they're relatively recent
18 cases, that is, since -- well I'm sure these
19 cases by Ulbom are probably in the 2000 years
20 because that's when computers...

21 MR. MATZKIN:

22 Oh, yes.

23 THE COURT:

24 ...started to really create this discovery
25 problem and what's admissible and exceptions,

1 and so forth. Just call me with the
2 citations. That's fine, you don't have to --
3 I don't need any more paperwork.

4 All right, gentlemen, I'll take this
5 under advisement. I'll await your cases Mr.
6 Matzkin and I'll give you my decision if not
7 the end of this week the first part of next
8 week.

9 MR. RUBIN:

10 Thank you, Your Honor.

11 MR. MATZKIN:

12 Thank you.

13 THE COURT:

14 Thank you gentlemen.

15 THE CLERK:

16 This hearing is now adjourned.

17 ***

18 [End of Proceeding]

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C E R T I F I C A T E

I, Francis J. Dujmic, hereby certify that the proceedings and evidence are contained fully and accurately on multi-track recording; that the recording was reduced to typewriting by my direction; and that this is a correct transcript of the same.

Francis J. Dujmic, Administrator
Court Reporters

DIAZ DATA SERVICES, hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Court of Common Pleas of Delaware County, Pennsylvania, in the matter of:

COMMONWEALTH FINANCIAL SYSTEMS, INC.

vs.

LARRY A. SMITH

#06-53273

BY:

Ann Dean

Digitally signed by Ann Dean
DN: cn=Ann Dean, o=Diaz Data Services,
ou, email=info@diazdata.com, c=US
Date: 2009.12.01 11:06:23 -05'00'

Ann Dean,
Transcriber for
Diaz Data Services

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

Judge

Diaz Data Services
331 Schuylkill Street, Harrisburg, PA 17110 ~ 717-233-6664