

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

<b>CAPTIAL ONE BANK (USA), N.A.</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>C.A. No. CPU4-12-000252</b>
	)	
<b>DONALD JONES,</b>	)	
	)	
<b>Defendant.</b>	)	

**ORDER**

Submitted: September 28, 2012  
Decided: October 17, 2012

Seth Yeager, Esquire, Wilmington, Delaware, for Plaintiffs

Donald Jones, New Castle, Delaware, self-represented Defendant

**ROCANELLI, J.**

This is a debt collection action. On January 25, 2012, Capital One Bank (USA), N.A. (“Plaintiff”) filed a Complaint against Defendant, Donald alleging that Mr. Jones defaulted on a Credit Card Agreement entered into with Plaintiff. Plaintiff contends that the principal balance due on Defendant’s account ending in 9640 is \$867.89. Plaintiff requests that the Court enter judgment in the amount of \$1,041.47 (principal balance of \$867.89 plus attorney fees of \$173.58), plus interest at a rate of 5.75% and costs of suit.

On March 31, 2012, the Affidavit of Process for David Jones at 115 Lincoln Ave., New Castle, DE 19720 was returned non est. According to the Affidavit, the process server was informed by current resident of the location that Defendant had moved to 120 Cross Avenue, New Castle, DE 19720.

On July 2, 2012, Mr. Jones was served with the Summons & Complaint at 120 Cross Ave., New Castle, DE 19720 when the process server left the Summons & Complaint with Mr. Jones' mother.

On July 7, 2012, Mr. Jones filed an Answer denying the allegations set forth in the Complaint. Mr. Jones avers that he does have an account with Capital One but that it is a different account that ends in 7382. Mr. Jones claims that he always pays his credit card bills on time and has never received any kind of late payment statement for the account in the Complaint ending in 9640. Mr. Jones requested that Capital One send him the account information on his account ending in 7382 so that he could review it. Mr. Jones asserts that the allegations in the Complaint are false and that Capital One must have made an error because he does not have an account ending in 9640 and that his account ending in 7382 is not in default.

Mr. Jones presented his position that the account ending in 9640, which is the subject of this litigation, actually belongs to another individual who also happens to be named "Donald Jones." Mr. Jones attached copies of credit card statements for two separate accounts: (1) an account ending in 7382 addressed to

Donald Jones at 120 Cross Ave., New Castle, DE 19720 and (2) an account ending in 9640 addressed to Donald Jones at 115 Lincoln Ave., New Castle, DE 19720. Mr. Jones also attached a sheet of paper stating “[t]he account ending in 9640 belongs to: Donald W. Jones II, 115 Lincoln Ave., New Castle, DE 19720, Born 7/21/79. He told me he had this account . . . .”

Trial is currently scheduled for November 2, 2012.

On August 28, 2012, Plaintiff filed a Motion to Compel alleging that Mr. Jones has failed to respond in a timely manner to Plaintiff’s First Set of Interrogatories, served on Mr. Jones by certified mail on July 12, 2012 at 120 Cross Ave., New Castle, DE 19720.

On September 28, 2012, the Court held a hearing on the Plaintiff’s Motion to Compel. The Plaintiff acknowledged that Plaintiff has not investigated Mr. Jones’ statements that he is the wrong person and that has a current up-to-date account with Capital One. Further, Plaintiff stated that Capitol One or counsel have not provided Mr. Jones with any account information on his account ending in 7382, as requested by Mr. Jones in his Answer. The finds that a referral to mediation would give the parties an opportunity to address these issues with the assistance of a neutral third party.

**NOW, THEREFORE, this 17<sup>th</sup> day of October 2012, IN THE INTEREST OF JUSTICE, IT IS HEREBY ORDERED:**

1. The November 2, 2012 trial date shall be rescheduled to January 2013 consistent with a date on which Plaintiff already has a trial scheduled;
2. Joanne Personti shall contact the parties to schedule mediation;
3. In the event that mediation is unsuccessful, then Mr. Jones shall answer the interrogatories within 30 days after the mediation is declared unsuccessful; and
4. In the event that mediation is unsuccessful, then Plaintiff shall provide to Ms. Jones within 30 days information regarding the account at issue ending in 9640, as well for as the account ending in 7382.

*Andrea L. Rocanelli*

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**The Honorable Andrea L. Rocanelli**