

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

LACY MUNCY

Plaintiff,

v.

Civil Action No.: 17-C-3

VICTORY LANE EXPRESS GROCERY, LLC,

Defendant.

COMPLAINT

COMES NOW, Lacy Muncy, by and through his attorney, Justin J. Marcum of Marcum Law Office, PLLC, and states as his Complaint the following:

1. That Plaintiff, Lacy Muncy, is a resident of Mingo County, West Virginia and lives at 35 West Fifth Avenue, Williamson, WV;
2. That Defendant, Victory Lane Express Grocery, LLC, is a West Virginia Limited Liability Company of the address 100 Victory Lane, Williamson, WV;
3. That Kenneth Farley, is a member of the limited liability company noted above and signed the Lease/Purchase Agreement that is the subject of this Complaint;
4. That on January 9, 2013, the parties entered into a Lease/Purchase Agreement that is the subject of this Complaint;
5. That the agreement was between Lacy Muncy and Victory Lane Express Grocery, LLC, and Kenneth Farley, Its Member;
6. That in Section Two, Term of Lease, it states that beginning February 1, 2013, Lessee/Buyer (Plaintiff) will begin paying Lessor/Seller (Defendant) Five Thousand Dollars (\$5,000.00) per month, which amount is to apply against the base One Million Dollar purchase price of the Premises, if Lessee/Buyer

Admitted to Practice  
2017 JAN 10 PM 2:33  
Mingo County Circuit Clerk

purchases the Premises Lessee/Buyer will have five (5) years - or sixty (60) payments of \$5,000.00 each - to reduce the base purchase price of the Premises to \$700,000.00 - to purchase the Premises for the remaining base purchase price of \$700,000.00 (\$1,000,000.00 - \$300,000.00 = \$700,000.00);

7. That under the Lease/Purchase Agreement Lacy Muncy is named the Lessor/Seller and Kenneth Farley signed for the Defendant Victory Lane Express Grocery, LLC as the Lessee/Buyer;
8. That in Section Thirteen It states that the Lessee/Buyer shall have breached this Lease/Purchase Agreement and shall be considered in default hereunder if (1) Lessee/Buyer fails to make monthly payments when due and does not make the delinquent payment within ten (10) days after receipt of notice thereof from Lessor/Seller, or (2) Lessee/Buyer fails to perform or comply with any of the covenants or conditions of this Lease/Purchase Agreement and such failure continues for a period of ten (10) days after a receipt of notice thereof from Lessor/Seller;
9. That in Section Fourteen it states that, in the event of a breach of this Lease/Purchase Agreement as set forth in Section Thirteen, the rights of Lessor/Seller shall be as follows: (1) Lessor/Seller shall have the right to cancel and terminate this Lease/Purchase Agreement, as well as all the rights, title and interest of Lessee/Buyer hereunder, by giving the Lessee/Buyer not less than thirty (30) days notice of the cancellation and termination following Lessee/Buyer's breach or default. On expiration of the time fixed in the notice, this Lease/Purchase Agreement and the right, title and interest of Lessee/Buyer

hereunder shall terminate, and Lessee/Buyer shall vacate the premises. (2)

Lessor/Seller may elect, but shall not be obligated to make any payment required of Lessee/Buyer herein or comply with any agreement, term or condition required hereby to be performed by Lessee/Buyer, and Lessor/Seller shall have the right to enter the Premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied, but any expenditure for the correction by Lessor/Seller shall not be deemed to waive or release Lessee/Buyer's default or Lessor/Seller's right to take any action as may be otherwise permissible hereunder in the case of any default; If either of the parties at any time elects to make payments or perform any act, required by the other herein, the party making such payment shall be reimbursed by the other party for all costs and expenses paid upon demand;

10. That notice was given to Defendants in this matter in accordance with the Lease/Purchase Agreement;
11. That the Defendant has not paid his monthly payment of \$5,000.00 since August, 2016;
12. That the Plaintiff has contacted the Defendant and the Defendant has promised to pay the monthly payment and catch up on all payments that are in arrears;
13. That the Plaintiff has contacted the Defendant on several different occasions to discuss payment arrangements and nothing has been paid on the arrearages;
14. That to date the Defendant is behind on payments in the amount of \$25,000.00 and those amounts are continuing to accrue;

15. That Plaintiff and Defendant signed a Bill of Sale on January 9, 2013 wherein Defendant paid four hundred twenty five thousand dollars [\$425,000.00] in an effort to sell, grant, transfer, and deliver unto Defendant all of Plaintiff's personal property, equipment, tools, and miscellaneous supplies and stock held for resale at 100 Victory Lane, US Route 119, Borderland, Mingo County, West Virginia;

16. That the said Bill of Sale notes that the property is encumbered by the Lease/Purchase Agreement;

17. That the Bill of Sale and Lease Purchase Agreement herein are legally binding documents that shall be considered together for purposes of this Complaint;

18. That the monies paid under the Bill of Sale are forfeited to Plaintiff due to Defendant's breach of the Lease/Purchase Agreement;

19. That Defendant has intentionally avoided payment on the Lease/Purchase Agreement entitling Plaintiff to punitive damages;

**THEREFORE**, based upon the abovementioned reasons, the Plaintiff requests the Defendant be held in breach of contract and the following relief:

20. That the Court issue a Civil Injunction against the Defendant;

21. That the Defendant be held in breach of contract;

22. That the Court Order the parties Lease/Purchase Agreement null and void and that the property automatically stay in the name of Lacy Muncy;

23. That Plaintiff be allowed to immediately enter the premises and remove all items of Defendant and keep those items as part of the arrearages herein;

24. That the Court Order the Defendant to turn over the keys to the said Victory Lane Express Grocery, LLC, to Lacy Muncy immediately;

25. That Defendant be Ordered to pay punitive damages herein;
26. That Defendant be Ordered to pay Plaintiff's attorney fees herein; and
27. That the Court Order any other relief that this Court may deem necessary.

**LACY MUNCY**

**By Counsel**



**Justin J. Marcum**

**WV Bar No. 11636**

**MARCUM LAW OFFICE, PLLC**

**201 E. 2<sup>nd</sup> Ave.**

**P.O. Box 2531**

**Williamson, WV 25661**

**MarcumLawOffice.com**

**IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA**

**LACY MUNCY**

**PLAINTIFF,**

**v.**

**Civil Action No.: \_\_\_\_\_**

**KENNETH FARLEY,**

**DEFENDANT**


**CERTIFICATE OF SERVICE**

I, Justin J. Marcum of Marcum Law Office, PLLC, counsel of record for the Petitioner herein, do hereby certify and state that I mailed a true and accurate copy of the **COMPLAINT**, to the following parties on the 5<sup>th</sup> day of January, 2017 by filing with the Mingo County Circuit Clerk and with the West Virginia Secretary of State:

**Kenneth Farley  
Personal Service**

**Victory Lane Express Grocery, LLC  
WV Secretary of State**

**LACY MUNCY  
By Counsel**

  
**Justin J. Marcum  
WV Bar No.: 11636  
MARCUM LAW OFFICE, PLLC  
201 E. 2<sup>nd</sup> Ave.  
P.O. Box 2531  
Williamson, WV 25661  
MarcumLawOffice.com**

IN THE CIRCUIT COURT OF

Mingo

COUNTY, WEST VIRGINIA

CIVIL CASE INFORMATION STATEMENT  
(Civil Cases Other than Domestic Relations)

## I. CASE STYLE:

## Plaintiff(s)

Lacy Muncy  
35 W 5th Ave.  
Williamson, WV 25661

Case No.

17-C-3

Judge:

Thompson

vs.

## Defendant(s)

Victory Lane Express Grocery, LLC

Name

100 Victory Lane

Street Address

Williamson, WV 25661

City, State, Zip Code

Days to  
Answer

20

Type of Service

Personal

## II. TYPE OF CASE:

☒ General Civil☐ Mass Litigation [As defined in T.C.R. 26.04(a)]☐ Asbestos☐ FELA Asbestos☐ Other:☐ Habeas Corpus/Other Extraordinary Writ☐ Other:☐ Adoption☐ Administrative Agency Appeal☐ Civil Appeal from Magistrate Court☐ Miscellaneous Civil Petition☐ Mental Hygiene☐ Guardianship☐ Medical MalpracticeIII. JURY DEMAND: ☐ Yes ☐ No CASE WILL BE READY FOR TRIAL BY (Month/Year):IV. DO YOU OR ANY  
OF YOUR CLIENTS  
OR WITNESSES  
IN THIS CASE  
REQUIRE SPECIAL  
ACCOMMODATIONS?☐ Yes ☒ No

## IF YES, PLEASE SPECIFY:

☐ Wheelchair accessible hearing room and other facilities☐ Reader or other auxiliary aid for the visually impaired☐ Interpreter or other auxiliary aid for the deaf and hard of hearing☐ Spokesperson or other auxiliary aid for the speech impaired☐ Foreign language interpreter-specify language:☐ Other:

Attorney Name: Justin Marcum

Firm: Marcum Law Office, PLLC

Address: 201 E. 2nd Ave., Williamson, WV

Telephone: 304.235-1475

Representing:

☒ Plaintiff☐ Defendant☐ Cross-Defendant☐ Cross-Complainant☐ 3rd-Party Plaintiff☐ 3rd-Party Defendant☐ Proceeding Without an Attorney

Original and 3 copies of complaint enclosed/attached.

Dated: 1/10/17

Signature: Justin Marcum

SCA-C-100: Civil Case Information Statement (Other than Domestic Relations)

Revision Date: 12/2015

Plaintiff: \_\_\_\_\_, et al Case Number: \_\_\_\_\_

vs.

Defendant: \_\_\_\_\_, et al

**CIVIL CASE INFORMATION STATEMENT  
DEFENDANT(S) CONTINUATION PAGE**

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: \_\_\_\_\_

Type of Service: \_\_\_\_\_

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: \_\_\_\_\_

Type of Service: \_\_\_\_\_

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Street Address

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Days to Answer: \_\_\_\_\_

Type of Service: \_\_\_\_\_

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: \_\_\_\_\_

Type of Service: \_\_\_\_\_