

IN THE CIRCUIT COURT OF MINERAL COUNTY, WEST VIRGINIA

**AMERICAN LEGION DEPARTMENT
MARYLAND, INC., VICTORY POST 155,**

Plaintiff,

v.

Civil Action No. 15-c-90

**FIRST UNITED BANK AND TRUST,
a foreign banking corporation,**

Defendant.

ANSWER OF FIRST UNITED BANK AND TRUST

First United Bank and Trust ("FUBT"), by counsel, Bowles Rice LLP, respectfully submits this Answer to Plaintiff's Complaint:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.

SECOND DEFENSE

The Complaint should be dismissed for failure to join an indispensable party pursuant to Rule 12(b)(7) of the West Virginia Rules of Civil Procedure.

THIRD DEFENSE

Upon information and belief, Plaintiff is without standing to bring this Complaint because it is not chartered or is not in good standing under the laws of Maryland as alleged in the Complaint.

EXHIBIT

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FOURTH DEFENSE

FUBT asserts the affirmative defenses of contributory/comparative negligence, statute of frauds, statute of limitations, laches, estoppel, and waiver.

FIFTH DEFENSE

Regarding the specific allegations contained in the Complaint, FUBT states as follows:

1. Upon information and belief, FUBT denies the allegations contained in paragraph 1 of the Complaint.

2. FUBT admits the allegations contained in paragraph 2 of the Complaint.

3. FUBT admits the allegations contained in paragraph 3 of the Complaint.

4. FUBT admits that on or about November 1, 2012 its employee, Karen Kelly, acting within the scope of her employment, opened checking account 420734409 at the request of Roger Lough. FUBT denies the remaining allegations contained within paragraph 4 of the Complaint.

5. FUBT admits that deposits of checks payable to Plaintiff were made into the aforesaid account. FUBT denies the remaining allegations contained within paragraph 5 of the Complaint.

6. FUBT is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 6 of the Complaint.

7. Some of the allegations contained in paragraph 7 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, FUBT denies those allegations. FUBT denies the remaining allegations contained in paragraph 7 of the Complaint.

FUBT denies all allegations asserted in the WHEREFORE paragraph of the Complaint, and further denies that Plaintiff is entitled to any relief or damages requested.

SIXTH DEFENSE

The West Virginia Consumer Credit and Protection Act does not apply to the acts alleged in the Complaint.

SEVENTH DEFENSE

Plaintiff does not have standing to assert claims or causes of action under the West Virginia Consumer Credit and Protection Act.

EIGHTH DEFENSE

FUBT denies that it owed any duty to Plaintiff. To the extent it did owe any duty to Plaintiff, FUBT did not breach such duty.

NINTH DEFENSE

FUBT did not act willfully, wantonly, maliciously or in any other manner that warrants a punitive award.

TENTH DEFENSE

Exemplary or punitive damages violate FUBT's right to procedural and substantive due process as provided by the Fifth and Fourteenth Amendments to the United States Constitution and Article III, Section 10, and all other applicable provisions, of the Constitution of the State of West Virginia. Exemplary or punitive damages further violate FUBT's right to equal protection under the law and are otherwise unconstitutional under the Fourteenth Amendment to the United States Constitution and Article III, Section 1, and all other applicable provisions, of the Constitution of the State of West Virginia, including, but not limited to, the protection from "excessive fines", protection from cruel and unusual punishment, and to proportional penalties as

provided in Article III, Section 5, of the Constitution of the State of West Virginia. Exemplary or punitive damages also violate FUBT's rights under the First Amendment to the United States Constitution and similar provisions of the Constitution of the State of West Virginia for reasons including, but not limited to, the chilling effect of such claims on the communications required between FUBT and its borrowers.

ELEVENTH DEFENSE

Plaintiff must prove exemplary or punitive damages by clear and convincing evidence the necessary predicates or conditions in order to establish the threshold requirements for the recovery of punitive damages. Exemplary or punitive damages claims should be bifurcated from the other claims alleged.

FUBT denies any and all other allegations in the Complaint not specifically admitted herein.

FUBT hereby gives notice that it intends to rely on such other affirmative defenses as may become available or apparent during the course of discovery or otherwise, including those defenses set forth in Rules 12(b) and 8(c)(1) of the West Virginia Rules of Civil Procedure, and FUBT hereby reserves its right to amend this answer to assert any such defense.

WHEREFORE, FUBT, having fully answered the Complaint, requests that this action against it be dismissed, with prejudice, and that it be awarded its costs, including attorney fees, incurred in responding to the Complaint, and any further and additional relief this Court deems appropriate.

FIRST UNITED BANK AND TRUST, INC.

By counsel

Ashley Hardesty Odell

Ashley Hardesty Odell [WVSB # 9380]

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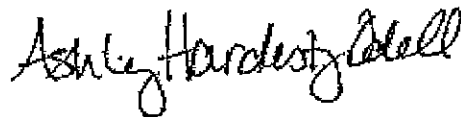
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that the foregoing document titled "*Answer of First United Bank and Trust*" was this 23rd day of November, 2015, served on Plaintiff's counsel by depositing a true and correct copy of the same in the United States Mail, postage prepaid, and addressed as follows:

Stephen P. Meyer, Esq.
Meyer, Ford, Glasser & Radman, PLLC
120 Capitol Street
Charleston, West Virginia 25301



Ashley Hardesty Odell [WVSB # 9380]