

INFORMATION ON ANSWERING A CONSUMER CREDIT TRANSACTION

You are in court to answer a "Consumer Credit Transaction" case because the Plaintiff claims you owe money. You have the right to tell the Court the reason(s) why the money may not be owed. Tell the Clerk any reason(s) which you believe you can prove to the Judge. The clerk will write your answer on the Answer in Person Consumer Credit Transaction form (CIV-GP-58a). If you want to give a written answer you can use the Answer in Writing Consumer Credit Transaction form (CIV-GP-58b). You can go to the Resource Center if you need more information to help you answer your case.

Below is an explanation of possible responses to a consumer credit transaction claim which the Court can consider in deciding how much money you may owe to the plaintiff.

ANSWER:

Line 1: You can make a general denial defense when you do not know if all the information in the complaint is true or if you think the information in the complaint is not right.

SERVICE

Line 2: Use this defense if you never got a copy of the summons from the plaintiff.

Line 3: Use this defense when the plaintiff did not give you the summons the right way. See a Pro-Se Attorney in the Civil Court's Resource Center or seek legal advice if you think you did not receive the court papers properly.

DEFENSES

Line 4: Use this defense when you do not owe the money that the plaintiff is asking for.

Line 5: Identity theft is when somebody steals your name and personal information and opens up credit accounts in your name pretending to be you. Mistaken identity is when you are sued for somebody else's debts because you have similar names or identifying information.

Line 6: Use this defense when you have paid all or part of the money that the plaintiff is suing you for.

Line 7: Use this defense when the plaintiff sues you for the wrong amount of money in the complaint. All the amounts listed must be right, including interest, collection costs and attorneys fees.

Line 8: Use this defense when the plaintiff bought your debt from the person or company that you owed money to. Because you never signed a contract with the plaintiff who bought your debt, you can ask if the plaintiff can sue you (also known as standing to sue you). The plaintiff must prove to the court that it owns your debt. To do this, the plaintiff must have a contract of sale (assignment) that says your debt has been sold.

Line 9: Use this defense when the plaintiff is a debt buyer, not the company that you charged money to. Most debt buyers must be licensed by the New York City Department of Consumer Affairs. If the plaintiff is not licensed, that is a defense to this case. You can find out at the Department of Consumer Affairs if the plaintiff is licensed. For further information on licencing you may contact the NYC Department of Consumer Affairs Licensing Center by calling 311 or use the instant licence check at: www.nyc.gov/html/dca/html/licenses/license_check.shtml.

Line 10: Most debt buyers must be licensed by the New York City Department of Consumer Affairs and must list the license number on the complaint. Use this defense if the plaintiff did not list a license number. The court may dismiss the case or may let the plaintiff change (amend) the complaint to list the license number.

Line 11: As time goes by, people and companies lose old records, so there is a time limit for starting cases. This is called the “statute of limitations.” The statute of limitations for filing a debt collection lawsuit for a “consumer credit transaction” is 6 years, counting from the “date of the default.” The “date of the default” is about 30 days after you last made a payment. In other words, if your last payment was in December 2005, you can be sued for the money until January 2012. The statute of limitations on a store credit card (like a Macy’s card) is 4 years. If you made a payment at any time after you first stopped paying, the plaintiff’s time to sue you starts to run again. If the court finds that the statute of limitations has passed, you do not owe the money.

Line 12: Use this defense if you declared bankruptcy and the money that you are being sued for now was discharged as part of the bankruptcy case. If the debt was discharged in bankruptcy you do not owe the money.

Line 13: Sometimes you have to give something you own to get a loan. This is called collateral. If you don’t pay your debt, the collateral is sold to pay back the money you owe. It should be sold for a “commercially reasonable” amount. Use this defense if you think your collateral was sold for less money than it was worth.

Line 14: Use this defense when the money in the complaint is much higher than what you think you owe. (But remember interest can make the money you owe higher than the original money that you borrowed.)

Line 15: You can use this defense when you think that you have tried to take care of this debt in a fair way, but the other side has not been fair or dealt honestly with you.

Line 16: Use this defense when the agreement was not fair and is very, very one-sided. “Shockingly” unfair.

Line 17: Use this defense when the creditor waited too long on purpose to bring you to court or to sell your debt to the plaintiff. This case surprised you and the delay is very bad and makes it hard for you to defend the case. The amount of delay depends on the facts of each case. If the creditor has a good reason for the delay this defense will not win.

Line 18: If you are in any of the military services (Army, Navy, etc.), you might not be able to pay at this time. You can ask the court to stop the case for 90 days. If you are still in active duty after 90 days, you can ask for another delay of the case.

Line 19: If you have any other defense or if there is anything that you think that a judge should know about the money that you are being sued for, tell the clerk or write it in your answer.

OTHER

Line 20: Some money can't be taken from you for payment of debts. If you get your money from social security, SSI, unemployment insurance, worker's compensation, veteran's benefits or DSS use this defense. Tell the judge where your income comes from. The following is a partial list of money which may be exempt:

1. Supplemental Security Income, (SSI)
2. Social Security
3. Public Assistance (welfare)
4. Spousal Support, maintenance (alimony) or child support;
5. Unemployment benefits
6. Disability benefits
7. Workers Compensation benefits
8. Public or private pensions
9. Veterans benefits
10. Ninety nine percent of your salary or wages earned in the last sixty days
11. Railroad retirement
12. Black lung benefits

Line 21: If you think that the creditor owes you money, you can tell the judge. Explain why you think you are owed money and how much is owed.

If you are not sure what to say in your answer you can call the New York City Financial Justice Hotline at 212-925-4929 for help, or you can visit the Civil Court's Resource Center. For the locations of our Resource Centers or for further information on Civil Court please visit the New York City Civil Court Website at : www.nycourts.gov/nyccivil.

FREE CIVIL COURT FORM

No fee may be charged to fill in this form.

Form can be found at: <http://www.nycourts.gov/courts/nyc/civil/forms.shtml>.