

NO1242983

DISCOVER BANK

PLAINTIFF,

V.

ADAM M WINNICZEK

DEFENDANT

IN THE COUNTY COURT

AT LAW NO.

HARRIS COUNTY, TEXAS

Plaintiff's Original Petition

PARTIES

Plaintiff, DISCOVER BANK, brings this suit against Defendant, ADAM M WINNICZEK, as follows:

1. Plaintiff is an entity organized and existing under the laws of the United States of America and authorized to bring this action in the State of Texas.
2. Defendant, ADAM M WINNICZEK, resides at 19715 IMPERIAL COLONY LN, KATY TX 77449-4142, which is also where service of process can be made upon the Defendant.
3. Discovery will be conducted under Level 1 of Rule 190 of the Texas Rules of Civil Procedure.

JURISDICTION

4. Plaintiff seeks only monetary relief of \$250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney fees and costs.
5. Plaintiff asserts that the above-named court has jurisdiction over the subject matter of this case and the person of Defendant and that damages sought are within the jurisdictional limits of the Court.

VENUE

6. Venue is proper in Harris County, Texas under section 15.002(a)(2) of the Texas Civil Practice and Remedies Code because it is the county of residence for the Defendant at the time the cause of action accrued.

FACTS

7. Defendant applied for and received a credit account, which is owned and administered by the Plaintiff (“the Account”). Defendant used or authorized the use of the Account for the purchase of goods, services, balance transfers or cash advances in accordance with the customer agreement (“Agreement”). By using the Account, the Defendant is obligated to repay the Plaintiff per the Agreement for all amounts and charges advanced.

8. The Defendant ceased making payments on the Account, thereby creating a default.

9. On 4/19/2024, the Plaintiff sent a letter to Defendant demanding payment in full of the Account.

10. After all just and lawful offsets, the Defendant owes \$20,134.58 on the Account as of the petition date. Plaintiff is not seeking attorney fees. The last four digits of the account number are XXXXXXXXXXXX2996. Plaintiff is the original creditor. The Account was opened on 10/17/2002, and was charged off on 02/29/2024.

COUNT 1 – Suit on Debt/Account Stated

11. Paragraphs 1 through 10 are incorporated by reference.

12. Plaintiff is the owner and beneficiary of all claims related to the Account. Plaintiff sent monthly periodic statements on the Account to the Defendant. Based on the Plaintiff’s records, there are no unresolved billing disputes related to the Account. After all lawful offsets, payments, and credits have been applied, the amount owing on the Account is \$20,134.58.

13. Plaintiff is entitled to recover on the Account because the transactions between the Plaintiff and the Defendant produced the indebtedness, there was an agreement between the Plaintiff and Defendant establishing the amount due, and the Defendant promised to pay the Plaintiff on the debt incurred but failed to do so.

14. Plaintiff has presented its claim to Defendant for payment, but Defendant has refused to pay the amount owed.

COUNT II – Breach of Contract

15. Paragraphs 1 through 9 are incorporated by reference.

16. Plaintiff is the owner and beneficiary of all rights under the Account opened by the Defendant.

17. Plaintiff and Defendant entered into a credit account agreement. Under the terms of the credit agreement, Plaintiff rendered credit services to Defendant. Defendant accepted the credit services and under the credit agreement became bound to Plaintiff the amounts of such credit services, plus additional amounts due under the credit agreement.

18. Defendant has failed to repay all of the credit services rendered under the credit agreement. The current balance due and owing, after allowing all just and lawful payments, credits and offsets, is \$20,134.58.

19. Plaintiff has presented its claim to Defendant for payment, but Defendant has refused to pay the amount owed.

CONDITIONS PRECEDENT

20. All conditions precedent to Plaintiff's right of recovery have been fulfilled.

PRAYER

WHEREFORE, premises considered, Plaintiff requests that the Defendant be cited to appear and answer herein, and that this Court set this matter for hearing. Upon final hearing, the Plaintiff seeks a judgment against the Defendant for damages totaling \$20,134.58, costs of court, as well as all other relief to which they are entitled.

Submitted by,
Suttell & Hammer, P.C.

Ashley Smith

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- () Andrew Agbanobi, SBOT #24104837
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Case Contacts

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