

CASE 17-C-162

WYOMING

PAGE 0001

JOYCE PATTERSON, ETC

VS. BRANCH BANKING AND TRUST COMPA

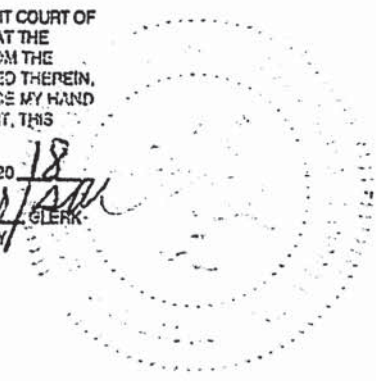
LINE DATE ACTION

1 12/27/17 CASE FILED;SUMMONS ISSUED AND RETURNED TO ATTY FOR SERVICE THRU
 2 SS
 3 01/29/18 RETURN OF SVC OF SUMMONS ON DEFT BY SOS 1/10/18.

STATE OF WEST VIRGINIA
COUNTY OF WYOMING, SS:

I, DAVID 'BUGS' STOVER, CLERK OF THE CIRCUIT COURT OF WYOMING COUNTY, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY FROM THE RECORD OF MY OFFICE AS THE SAME EXISTED THEREIN, IN TESTIMONY WHEREOF, I HEREBY PLACE MY HAND AND AFFIX THE OFFICIAL SEAL OF THIS COURT, THIS

THE 8th DAY OF February 2018
David Stover CLERK
CIRCUIT COURT OF WYOMING COUNTY
WEST VIRGINIA



APPROPRIATE - 7. 11.18
2018 2:00PM - 2:15PM



THE COURT HAS REVIEWED THE
MOTION AND THE RECORD AND
CONCLUDES THAT THE MOTION
IS DENIED. THE COURT HAS
CONSIDERED THE MOTION AND
THE RECORD AND CONCLUDES
THAT THE MOTION IS DENIED.

JUDGE

FILED
CLERK

**CIVIL CASE INFORMATION STATEMENT
CIVIL CASES**

In the Circuit Court of Wyoming County, West Virginia

I. CASE STYLE

Plaintiff:

Case # 17-C-162
JUDGE McGraw

JOYCE PATTERSON, on behalf of herself
and all others similarly situated

v.

Defendant:

Days to
Answer

Type of Service

BRANCH BANKING AND
TRUST COMPANY

30

Sec of State

West Virginia County of WV

2017 DEC 21 A 11:03

FILED

Original and two (2) copies of COMPLAINT furnished herewith.

**COURT'S
COPY**

SUMMONS

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

CIVIL ACTION NO. 17-C-162

JOYCE PATTERSON, on behalf of herself
and all others similarly situated,

PLAINTIFF

V.

BRANCH BANKING AND
TRUST COMPANY,

DEFENDANT

To the above-named Defendant: **BRANCH BANKING AND TRUST COMPANY
C/O CT CORPORATION SYSTEM
5400 D BIG TYLER ROAD
CHARLESTON, WV 25313**

IN THE NAME OF THE STATE OF WEST VIRGINIA: You are hereby summoned and required to serve upon **RALPH C. YOUNG, CHRISTOPHER B. FROST, AND STEVEN R. BROADWATER, JR.,** of **HAMILTON, BURGESS, YOUNG & POLLARD, PLLC,** whose address is **P O BOX 959, FAYETTEVILLE, WEST VIRGINIA 25840,** and **JED R. NOLAN** of **MOUNTAIN STATE JUSTICE, INC.,** whose address is **1031 QUARRIER STREET, SUITE 200, CHARLESTON, WEST VIRGINIA 25301,** plaintiff's attorneys, an answer, including any related counterclaim or defense you may have, to the complaint filed against you in the above-styled civil action, a true copy of which is hereby delivered to you. You are required to serve your written answer with the Clerk of this Court, and with a copy of said answer served upon plaintiff's attorney within **THIRTY (30)** days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 12-27-17

David Stover
Clerk of Court

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

JOYCE PATTERSON, on behalf of herself
and all others similarly situated,

PLAINTIFF

V.

CIVIL ACTION NO. 17-C-162

BRANCH BANKING
AND TRUST COMPANY,

DEFENDANT

COMPLAINT

PRELIMINARY STATEMENT

1. Defendant Branch Banking and Trust Company (herein, "BB&T") is a bank that issues credit cards to West Virginia consumers. When Plaintiff fell behind on her payments, Defendant improperly demanded payment of additional attorneys' fees and costs. The collection of or the threat to collect such fees are prohibited by West Virginia law. To enforce West Virginia law and stop these abusive business practices, Plaintiff brings this action on her own behalf and on behalf of a class of West Virginia borrowers with loans serviced by the Defendant.

FILED
2017 DEC 7 A 11:03
WYOMING COUNTY, WV

PARTIES

- 2. Plaintiff resides at Warriormine, Wyoming County, West Virginia.
- 3. Defendant BB&T is a credit card issuer and servicer and creditor-debt collector responsible for collecting Plaintiff's payments and the charges assessed against her account.

FACTS

ATTORNEYS' FEES AND COSTS

- 4. The Plaintiff entered into a credit card agreement with BB&T.

5. After the Plaintiff became in arrears upon an alleged indebtedness to the Defendant, the Defendant began to engage in collection of such indebtedness through the use of telephone calls placed to Plaintiff, by written communications and did otherwise communicate with Plaintiff to collect the alleged debt.

6. On March 9, 2017, BB&T sent a collection letter to Plaintiff, Ms. Patterson, captioned "**FINAL DEMAND NOTICE**" which unequivocally stated:

Your agreement with us provides that you will be liable for reasonable attorney's fees and costs of collection, in the event that we must initiate a lawsuit against you to collect your outstanding balance. If you pay your entire outstanding balance within 10 days from the receipt of this notice, you will not be liable for collection costs and attorney's fees. Do not pay your entire outstanding balance within that period, we may enforce our right to collect expenses and reasonable attorney's fees.

7. The agreement between Plaintiff and BB&T provides that in the event of default by the cardholder in making any payment when due "cardholder agrees to pay all costs of collection **permitted by applicable law** including reasonable attorney's fees, incurred by bank in connection therewith." (Emphasis added)

8. BB&T's unequivocal assertion that the cardholder agreement provides that Plaintiff "will be liable for reasonable attorney's fees and cost of collection, in the event that we must initiate a lawsuit against you" in its letter to Plaintiff dated March 9, 2017, is a false and fraudulent representation which is inconsistent with the actual language in the cardholder agreement between Plaintiff and BB&T as the cardholder agreement only provides for the recovery of attorney fees if **permitted by applicable law**.

9. The *West Virginia Consumer Credit and Protection Act* (WVCCAP), *West Virginia Code* §46A-2-127(g), establishes that it is a *per se* fraudulent, deceptive and misleading prohibited act for BB&T to represent that an existing obligation of the Plaintiff may be increased by the addition of attorney's fees.

10. The *West Virginia Consumer Credit and Protection Act* (WVCCAP), *West Virginia Code* §46A-2-128(c), establishes that it is a *per se* unfair or unconscionable means to collect the debt to attempt to collect "all or any part of the debt collectors fee or charges for services rendered..."

11. BB&T's demand for attorneys' fees and costs is prohibited by West Virginia law. *West Virginia Code* § 46A-2-127(g) prohibits "[a]ny representation that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation[.]"

12. *West Virginia Code* §46A-2-128(c) prohibits a debt collector from "collect[ing] or attempt[ing] to collect from the consumer all or any part of the debt collector's fee or charge for services rendered."

13. *West Virginia Code* §46A-2-128(d) prohibits "[t]he collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating the obligation and by statute."

14. Finally, *West Virginia Code* §46A-2-115 delineates recoverable expenses on loans secured by real property and does not allow for the recovery of attorney's fees.

CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action on her own behalf and on behalf of all other similarly situated individuals pursuant to Rule 23 of the *West Virginia Rules of Civil Procedure*. The class is presently defined as:

All West Virginia citizens at the time of the filing of this action who, within the applicable statute of limitations preceding the filing of this action through the date of class certification, had or have loans serviced by the Defendant and received letters similar to Plaintiff.

16. The requirements of Rule 23 are satisfied as follows:

- a. The class is so numerous that joinder of all members is impracticable;
- b. There are questions of law and fact common to all members of the class; and
- c. The named Plaintiff's claims are typical of those of the class as a whole.

17. The Plaintiff has displayed an interest in vindicating the rights of the class members, will fairly and adequately protect and represent the interest of the class, and is represented by skillful and knowledgeable counsel. The relief sought by the named Plaintiff will inure to the benefit of the class generally.

18. Therefore, the common questions of law and fact predominate over individual questions, and the class action device is superior to other available methods for the fair and efficient adjudication of the controversy.

LEGAL CLAIMS

Count I – Illegal Debt Collection — Illegal Demand for Attorneys' Fees (CLASS AND INDIVIDUAL CLAIM)

19. Plaintiff incorporates the preceding paragraphs by reference.
20. By threatening to collect attorneys' fees and costs, BB&T violated the *West Virginia Consumer Credit and Protection Act*, *West Virginia Code* §§46A-2-127(g), -128(c) and -128(d).

Count II – Illegal Debt Collection — false representation of amount of claim (CLASS AND INDIVIDUAL CLAIM)

21. Plaintiff incorporates the preceding paragraphs by reference.
22. By making false representations regarding attorneys' fees, BB&T misrepresented the amount of a claim in violation of *West Virginia Code* §46A-2-127(d).

Count III - Violations of the *West Virginia Consumer Credit and Protection Act* (INDIVIDUAL CLAIM)

23. The Plaintiff incorporates the previous paragraphs as if fully set forth herein.
24. The Plaintiff is a "person" who falls under the protection of Article 2 of the *West Virginia Consumer Credit and Protection Act* (herein "WVCCPA") and is entitled to the remedies set forth in Article 5 of the WVCCPA.
25. The Defendant, BB&T is a debt collector as defined by *West Virginia Code* §46A-2-122(d) engaging directly or indirectly in debt collection as defined by *West Virginia Code* §46A-2-122(c) within the State of West Virginia, including Raleigh County, West Virginia.
26. The Defendant has engaged in repeated violations of Article 2 of the *West Virginia Consumer Credit and Protection Act*, including but not limited to,

- a. attempting to collect a debt by coercion in violation of *West Virginia Code* §46A-2-124;
- b. engaging in unreasonable or oppressive or abusive conduct towards the Plaintiff in connection with the attempt to collect a debt by placing telephone calls to the Plaintiff in violation of *West Virginia Code* §46A-2-125;
- c. causing Plaintiff's phone to ring or engaging persons, including the Plaintiff, in telephone conversations repeatedly or continuously or at unusual times or at times known to be inconvenient, with the intent to annoy, abuse or oppress the Plaintiff in violation of *West Virginia Code* §46A-2-125(d);
- d. utilizing fraudulent, deceptive or misleading representations or means in an attempt to collect a debt in violation of *West Virginia Code* §46A-2-127; and
- e. using unfair or unconscionable means to collect a debt from Plaintiff in violation of *West Virginia Code* §46A-2-128.

27. As a result of the Defendant's actions, Plaintiff has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise was caused indignation and distress.

STIPULATION

28. Plaintiff stipulates that, with respect to her individual claims, she seeks a recovery of not more than \$75,000, exclusive of costs and interest.

29. Plaintiff agrees to be bound by this stipulation throughout the pendency of this action.

RELIEF SOUGHT

Plaintiff seek the following relief:

A. Class certification on all counts, together with an award to class members of all available relief, including but not limited to civil penalties, actual damages, compensatory damages, interest, attorneys' fees, and costs;

B. A declaration that BB&T breached the parties' contract in the manner described above;

C. Reasonable attorneys' fees and the costs of this action, under *West Virginia Code* §46A-5-104;

D. Pre- and post-judgment interest; and

E. All other relief the Court deems appropriate.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

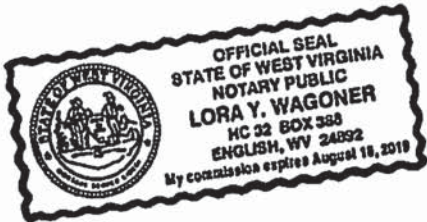
PLAINTIFF(S) AND ATTORNEYS FOR PLAINTIFF(S) AGREE TO BE BOUND BY THE FOLLOWING STIPULATION: SO LONG AS THIS CASE REMAINS IN WEST VIRGINIA CIRCUIT COURT OR AN ARTICLE III COURT, THE PLAINTIFF SHALL NEITHER SEEK NOR ACCEPT AN AMOUNT GREATER THAN \$75,000.00 IN THIS CASE, INCLUDING ANY AWARD OF ATTORNEY'S FEES, BUT EXCLUDING INTEREST AND COSTS. THIS STIPULATION HAS NO APPLICATION, FORCE, OR ENFORCEABILITY IN AN ARBITRATION FORUM OR OTHER ALTERNATIVE DISPUTE RESOLUTION ENVIRONMENT EXCEPT NON-BINDING MEDIATION AS PART OF A COURT PROCEEDING.

JOYCE PATTERSON

BY COUNSEL

STIPULATION OF PLAINTIFF AND ATTORNEYS FOR PLAINTIFF

Plaintiff(s) and Attorneys for Plaintiff(s) agree to be bound by the following stipulation: so long as this case remains in West Virginia Circuit Court or an Article III Court, the Plaintiff shall neither seek nor accept an amount greater than \$75,000.00 in this case, including any award of attorney's fees, but excluding interest and costs. This stipulation has no application, force, or enforceability in an arbitration forum or other alternative dispute resolution environment except non-binding mediation as part of a court proceeding.



Joyce Patterson
JOYCE PATTERSON

Ralph C. Young
RALPH C. YOUNG (W. Va. Bar #4176)
CHRISTOPHER B. FROST (W. Va. Bar #9411)
STEVEN R. BROADWATER, JR. (W. Va. Bar #11355)
JED R. NOLAN (W. Va. Bar #10833)
HAMILTON, BURGESS, YOUNG & POLLARD, PLLC

STATE OF WEST VIRGINIA
COUNTY OF Marshall, TO-WIT:

Plaintiff(s) and Attorneys for Plaintiff(s) agree to be bound by the following stipulation. So long as this case remains in West Virginia Circuit Court or an Article III Court, the Plaintiff shall

Lora Y. Wagoner
NOTARY PUBLIC

My commission expires:

August 18, 2019

PLAINTIFF: JOYCE PATTERSON, on behalf of herself and all others similarly situated DEFENDANT: BRANCH BANKING AND TRUST COMPANY	CIVIL ACTION NO. <u> -C- </u>
---	---------------------------------

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Ct
<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input checked="" type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND: Yes No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): 06/2018

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? YES NO
 IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

Attorney Name: RALPH C. YOUNG
 CHRISTOPHER B. FROST
 STEVEN R. BROADWATER, JR.
Firm Name: HAMILTON BURGESS YOUNG
 & POLLARD, pllc
Address: P O BOX 959
 FAYETTEVILLE, WV 25840
Telephone: (304) 574-2727

Co-Counsel: JED R. NOLAN
Firm Name: MOUNTAIN STATE JUSTICE, INC.
Address: 1031 QUARRIER STREET, SUITE 200
 CHARLESTON, WV 25301
Telephone: (304) 344-3144

Representing:
 Plaintiff Defendant
 Cross-Complainant Cross-Defendant

Dated: December 21, 2017



 Signature

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305

FILED

2018 JAN 29 P 1:36

CIRCUIT CLERK OF
WYOMING COUNTY, WV.



Mac Warner
Secretary of State
State of West Virginia
Phone: 304-558-8000
888-767-8883
Visit us online:
www.wvsos.com

David "Bugs" Stover
Wyoming County Courthouse
P.O. Box 190
Pineville, WV 24874-0190

Control Number: 209286

**Defendant: BRANCH BANKING AND TRUST
COMPANY
5400 D Big Tyler Road
CHARLESTON, WV 25313 US**

Agent: C. T. Corporation System

County: Wyoming

Civil Action: 17-C-162

Certified Number: 92148901125134100002217416

Service Date: 1/10/2018

I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

Mac Warner

Mac Warner
Secretary of State

SUMMONS

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

CIVIL ACTION NO. 17-C-162

JOYCE PATTERSON, on behalf of herself
and all others similarly situated,

PLAINTIFF

V.

BRANCH BANKING AND
TRUST COMPANY,

DEFENDANT

SECRETARY OF STATE
STATE OF WEST VIRGINIA

2018 JAN 10 P 2:56

To the above-named Defendant: **BRANCH BANKING AND TRUST COMPANY
C/O CT CORPORATION SYSTEM
5400 D BIG TYLER ROAD
CHARLESTON, WV 25313**

IN THE NAME OF THE STATE OF WEST VIRGINIA: You are hereby summoned and required to serve upon **RALPH C. YOUNG, CHRISTOPHER B. FROST, AND STEVEN R. BROADWATER, JR., of HAMILTON, BURGESS, YOUNG & POLLARD, PLLC,** whose address is **P O BOX 959, FAYETTEVILLE, WEST VIRGINIA 25840,** and **JED R. NOLAN of MOUNTAIN STATE JUSTICE, INC.,** whose address is **1031 QUARRIER STREET, SUITE 200, CHARLESTON, WEST VIRGINIA 25301,** plaintiff's attorneys, an answer, including any related counterclaim or defense you may have, to the complaint filed against you in the above-styled civil action, a true copy of which is hereby delivered to you. You are required to serve your written answer with the Clerk of this Court, and with a copy of said answer served upon plaintiff's attorney within **THIRTY (30)** days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: 12-27-17

David St...
Clerk of Court
CIRCUIT CLERK OF
WYOMING COUNTY, WV
2018 JAN 29 P 1:36
FILED

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [WV Consumer Claims Branch Banking and Trust Co. Improperly Sought Attorneys' Fees](#)
