

9-20-2008

Citibank (South Dakota) N.A. v. Carroll Order Dckt. 35053

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In the Supreme Court of the State of Idaho

LAW CLERK

CITIBANK (SOUTH DAKOTA), N.A.,)

Plaintiff-Respondent,)

v.)

MIRIAM G. CARROLL,)

Defendant-Appellant.)

ORDER GRANTING MOTION TO
AUGMENT THE RECORD

Supreme Court Docket No. 35053
Idaho County Case No. 2006-37067


A MOTION TO AUGMENT THE RECORD AND STATEMENT IN SUPPORT THEREOF with attachment was filed by Respondent September 24, 2008. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondent's MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED, and the augmentation record shall include the documents listed below, copies of which accompanied the Motion:

1. Judgment filed April 3, 2008.

DATED this 20th day of September, 2008.

For the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record

AUGMENTATION RECORD

In the Supreme Court of the State of Idaho

CITIBANK (SOUTH DAKOTA), N.A.,

Plaintiff-Respondent,

v.

MIRIAM G. CARROLL,

Defendant-Appellant.

ORDER GRANTING MOTION
TO AUGMENT

Supreme Court Docket No. 35053
Idaho County Case No. 2006-37067

A MOTION TO AUGMENT with attachment was filed by Appellant Miriam G. Carroll on October 20, 2008. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant Miriam G. Carroll's MOTION TO AUGMENT be, and hereby is, GRANTED and the augmentation record shall include the document listed below, a file stamped copy of which accompanied the Motion:

1. Demand for Jury Trial, file stamped August 21, 2006.

DATED this 22nd day of October 2008.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Miriam G. Carroll, pro se
Counsel of Record

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
208-935-7962
FAX: 208-926-4169
Defendant, *in propria persona*

FILED

IDAHO COUNTY DISTRICT COURT
FILED
AT 3:06 O'CLOCK P.M.

AUG 21 2006
ROSE E. GEHRING
CLERK OF DISTRICT COURT
Kathy [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA) N.A.,)	
)	
Plaintiff,)	Case No. CV-2006-37067
)	
vs.)	DEMAND FOR JURY TRIAL
)	
MIRIAM G. CARROLL)	
)	
Defendant,)	
<hr/>		

COMES NOW the Defendant, Miriam G. Carroll, and submits her Demand for a Jury Trial. The Defendant has a right to a jury trial for the following reasons:

1. Rule 38(a) of the Idaho Rules of Civil Procedure preserves the right to a jury trial, specifically:
 - (a) The right of trial by jury as declared by the constitution or as given by a statute of the state of Idaho shall be preserved to the parties inviolate except in the small claims department.
2. The Defendant's demand for a jury trial is timely under Rule 38(b):
 - (b) Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefore in writing at any time after the commencement of the

action and not later than fourteen (14) days after the service of the last pleading directed to such issue.

- (c) Black's Law Dictionary defines pleading as: **pleading**, n. 1. A formal document in which a party to a legal proceeding (esp. a civil lawsuit) sets forth or responds to allegations, claims, denials, or defenses.

a. **Amended pleading.** A pleading that replaces an earlier pleading and that contains matters omitted from or not known at the time of the earlier pleading.

- (d) This demand is being served four (4) days after an amended answer to complaint, well within the fourteen (14) day time limit.

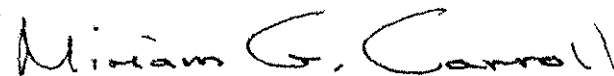
The Defendant will not accept a jury of less than twelve (12) persons.

The Defendant specifies the following issues for trial by jury:

- (i) The extent and number of the violations of the Truth in Lending Act.
- (ii) The amount of statutory damages due the Defendant.
- (iii) The extent of the negligence of the Plaintiff.
- (iv) The amount of the damages due the Defendant for that negligence.
- (v) The extent of willful and wanton misconduct.
- (vi) The amount of the punitive damages due the Defendant for that misconduct.
- (vii) The legitimacy of the debt claimed by the Plaintiff.
- (viii) The actual amount which may be owed by the Defendant.

The issue of whether the Defendant's dispute letter conforms to the requirements of the Truth in Lending Act is a matter of law and will be decided by an evidentiary hearing scheduled for the 31st day of August, 2006 in this court.

Dated this 18th day of August, 2006.



Miriam G. Carroll, Defendant, *in propria persona*

CERTIFICATE OF SERVICE

I, Miriam G. Carroll, hereby certify that I mailed a true and correct copy of my DEMAND FOR JURY TRIAL to the attorney for the Plaintiff this 18th day of August, 2006, by Certified Mail #7005 1160 0002 7630 2947 with proper postage affixed thereon, at the following address:

Jeffrey M. Wilson
Wilson & McColl
420 W. Washington
P.O. Box 1544
Boise, ID 83701

Miriam G. Carroll
Miriam G. Carroll, Defendant, *in propria persona*



I Rose E. Gehring, Clerk of the above entitled Court do hereby certify the foregoing to be a true and correct copy of the original instrument on file in my office.

WITNESS my hand and official seal this 8
Day of October, 20 08
Rose E. Gehring, Clerk

By: Sherrill Clark Deputy

In the Supreme Court of the State of Idaho

CITIBANK (SOUTH DAKOTA), N.A.,)
)
Plaintiff-Respondent,)
)
v.)
)
MIRIAM G. CARROLL,)
)
Defendant-Appellant.)
)
)
)
)
)

ORDER GRANTING MOTION TO
AUGMENT THE RECORD

Supreme Court Docket No. 35053
Idaho County Case No. 2006-37067

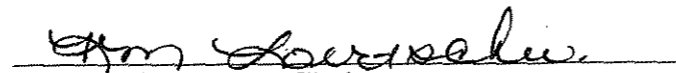
A MOTION TO AUGMENT THE RECORD AND STATEMENT IN SUPPORT THEREOF with attachment was filed by Respondent September 24, 2008. Therefore, good cause appearing,


IT HEREBY IS ORDERED that Respondent's MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED, and the augmentation record shall include the documents listed below, copies of which accompanied the Motion:

1. Judgment filed April 3, 2008.

DATED this ~~20th~~ day of September, 2008.

For the Supreme Court



Stephen W. Kenyon, Clerk


cc: Counsel of Record

460800


IDAHO COUNTY DISTRICT COURT
AT 5:33 FILED
O'CLOCK P.M.

APR 03 2008

ROSE E. GEHRING
CLERK OF DISTRICT COURT
KATHY JOHNSON DEPUTY

Sheila R. Schwager, ISB No. 5059
Loren K. Messerly, ISB No. 7434
HAWLEY TROXBELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: (208) 344-6000
Facsimile: (208) 342-3829
Email: srs@hteh.com
lnes@hteh.com

Instrument # 460800

IDAHO COUNTY, IDAHO,
5-2-2008 10:19:34 No. of Pages: 3
Recorded for : HAWLEY TROXBELL ENNIS & HAWLEY
ROSE E. GEHRING Fee: 9.00
Ex-Officio Recorder Deputy 

Attorneys for Citibank (South Dakota), N.A.

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

CITIBANK (SOUTH DAKOTA), N.A.,

Plaintiff/Counterdefendant,

vs.

MIRIAM G. CARROLL,

Defendant/Counterclaimant.

Case No. CV-2006-37067

JUDGMENT

Plaintiff Citibank (South Dakota), N.A ("Plaintiff") having filed this action against Defendant Miriam G. Carroll ("Defendant") and having defended the counterclaim filed by Defendant; Plaintiff having filed a motion for summary judgment on January 19, 2007, requesting judgment on its claims and on Defendant's counterclaims; this Court having entered its Memorandum Decision and Order on December 10, 2007, granting Plaintiff's Motion for Summary Judgment; this Court having further entered its Amended Order Regarding Attorney Fees on March 27, 2008; and good cause appearing therefore;

JUDGMENT - 1

CERTIFIED COPY
FILED 04.0007 1180783 1

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that Defendant's Counterclaims are DISMISSED with prejudice.

IT IS FURTHER HEREBY ORDERED, ADJUDGED, AND DECREED, that Judgment is awarded in favor of Plaintiff and against Defendant Miriam G. Carroll as follows:


1. In the amount of \$24,567.91, as the principal balance due on the credit card account with Plaintiff, plus \$16,244.79 in accrued interest from October 6, 2005 to December 20, 2007, for a total amount of principal and interest of \$40,812.81 as of December 20, 2007, plus accruing interest from December 20, 2007, at the per diem rate of \$20.18, to the date of this Judgment; and

2. Reasonable attorney's fees and costs in the amount of \$49,491.29;

3. Interest on the total judgment amount at the legal rate, to accrue commencing effective from the date of this Judgment; and

4. Plaintiff's post-judgment collection costs, including reasonable attorney fees.

DATED THIS 3 day of April, 2008.



JOHN BRADBURY
DISTRICT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of April, 2008, I caused to be served a true copy of the foregoing JUDGMENT By the method indicated below, and addressed to each of the following:

Miriam G. Carroll
HC-11 Box 366
Kamiah, ID 83536
[pro se]

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Sheila R. Schwager
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000 |
P.O. Box 1617 |
Boise, Idaho 83701-1617

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Clerk of the Court

By Kathy Johnson
Deputy Clerk



I, Rose E. Gehring, Clerk of the above entitled Court do hereby certify the foregoing to be a true and correct copy of the original instrument on file in my office.
WITNESS my hand and official seal this 24th day of April, 20 08
Rose E. Gehring, Clerk
By Kathy Johnson Deputy