

**IN THE DISTRICT COURT OF FAULKNER COUNTY, ARKANSAS  
CONWAY DIVISION**

**PORTFOLIO RECOVERY ASSOCIATES, LLC**

**PLAINTIFF**

**V.**

**CASE NO. CWCV-13-423**

FAULKNER COUNTY D.C.  
12 APR 2013  
PM3:47

**LORETTA BURKS**

**DEFENDANT**

**OBJECTION TO DEFENDANT'S PROPOSED ORDER AND RESPONSE TO MOTION  
FOR NEW TRIAL**

Comes now the Plaintiff, by and through counsel, Allen & Withrow, and for its Objection to Proposed Order and Response to Motion for New Trial, states as follows:

1. Plaintiff objects to the Proposed Order Granting Defendant a New Trial. Plaintiff first became aware of the Defendant's Motion for New Trial when counsel for Defendant mailed a copy of the proposed order to the court and the Plaintiff.

2. Plaintiff generally and specifically denies each and every allegation contained in the Defendant's Motion for New Trial unless specifically admitted herein.

3. Plaintiff specifically and generally denies the allegation in paragraph 3-9 of the Defendant's Motion for New Trial. Specifically, Plaintiff investigated Defendant's claim in 2012 and responded to her with a letter asserting that the Plaintiff did an investigation into the claim and determined the debt to still be valid. The letter sent by the Plaintiff to the Defendant is attached hereto as Exhibit "A."

4. Plaintiff generally and specifically denies the allegation in paragraph 11 of the Defendant's Motion for New Trial. Specifically, Rule 60(c)(2) allows a new trial to be granted in proceedings against defendants constructively summoned. There is no allegation the Defendant in this case was constructively served and, to the contrary, the Defendant was actually served with the complaint and summons on August 1, 2013, as evidenced by the proof of service attached hereto as Exhibit "B." Furthermore, the Defendant's own admission in her Motion for New Trial that she filed an answer in this matter and defended it at every step of the way is further evidence that she was not constructively summoned.

5. Plaintiff generally and specifically denies the allegations in paragraph 11 of the Defendant's Motion for New Trial regarding the entry of the judgment. The Defendant is incorrect as to when a judgment is entered in district court. Rule 8(c) of the Arkansas District Court Rules

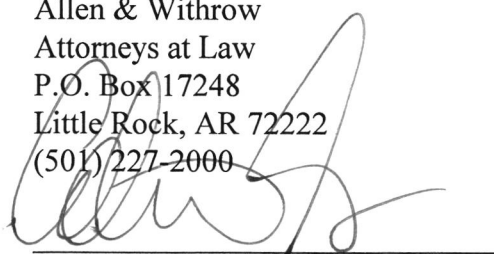
provides the rule for judgment entry. The Rule states that “[t]he court shall timely enter in the docket the date and amount of the judgment, whether rendered by default or upon the merits.” Furthermore, Arkansas case law provides further support for when a judgment is actually entered in district court. An inferior court, such as a municipal court, enters any judgment it renders by entering, in a timely manner, the date and amount of the judgment in the court’s docket. *West Apartments, Inc. v. Booth*, 297 Ark. 247, 250 760 S.W.2d 861, 863 (1988). This procedure for entering judgments in an inferior court is in marked contrast to that applicable to courts of general jurisdiction under ARAP 4(e), where judgments are entered only when they are filed with the clerk of those courts. *Id.*

6. Plaintiff specifically and generally denies the allegation in paragraph 14-17 of the Defendant’s Motion for New Trial. Specifically, the excessive amount on the writ of garnishment was due to an error in the computation of Plaintiff’s computer software and has since been corrected. Furthermore, the amount garnished from the Defendant’s bank account did not exceed the amount of the judgment. Therefore, the Defendant was not prejudiced by this error.

WHEREFORE, Plaintiff prays that the Court deny the relief sought in Defendant’s Motion for New Trial and award the Plaintiff all other just and proper relief.

That pursuant to Ark. R. Civ. P. 78, Plaintiff requests a hearing on this and requests the Court rule on the pleadings at that time.

Allen & Withrow  
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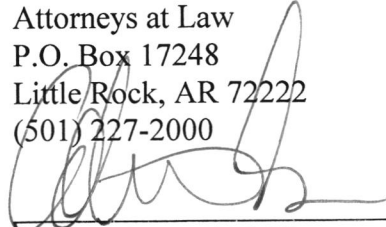
Lori Withrow (98069)  
Colton Gregory (2013181)  
Gary J Barrett (2000071)

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that a copy of the above and foregoing has been sent via first-class mail on April 11<sup>th</sup>, 2016 to the following:

Kathy A. Cruz  
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April 11, 2016

FAULKNER COUNTY D.C.  
12 APR 2016

Clerk

Faulkner County District Court

810 Parkway

Conway, AR 72032

PM3:47

Re: Portfolio Recovery Associates, LLC v. Loretta Burks  
CWCV-13-423

Dear Clerk:

Enclosed please find an Objection to Proposed Order and Response to Defendant's Motion for New Trial, which I would appreciate being filed with your office. Please return filed copies to me in the enclosed self-addressed envelope.

Thank you in advance for your kind attention to this matter.

Respectfully,



Lori Withrow

Enclosures

cc: Judge Weaver/Reynolds  
Kathy A. Cruz  
Joel Hargis

12-05473

resp.fm