

Teresa A. Hill, ISB No. 6175
Gregory C. Tollefson, ISB No. 5643
STOEL RIVES LLP
101 S. Capitol Boulevard, Suite 1900
Boise, Idaho 83702-5958
Telephone: (208) 389-9000
Facsimile: (208) 389-9040
tahill@stoel.com
gctollefson@stoel.com

04 JUL 21 PM 1:30
CAMPBELL BURKE
CLERK IDAHO

Attorneys for Defendant Leasecomm Corporation

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

CHUCK WEDDE, dba POCATELLO CAB
COMPANY)

Plaintiff,)

v.)

LEASECOMM CORPORATION and
LOGANBERRY MERCHANT SERVICE,)

Defendants.)

Case No. CIV 03-505-E-BLW

**DEFENDANT LEASECOMM
CORPORATION'S STATEMENT OF
MATERIAL FACTS IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

ORIGINAL

14

In accordance with District of Idaho Local Civil Rule 7.1(b)(1), Defendant Leasecomm Corporation ("Leasecomm" or "Defendant"), hereby submits this Statement of Material Facts in Support of Motion for Summary Judgment, upon which Defendant contends there should be no dispute.

1. Plaintiff, Charles F. "Chuck" Wedde, dba Pocatello Cab Company, ("Wedde") has been the sole owner of Pocatello Cab Company since 1993. (Deposition of Chuck Wedde at pages 17:6-18:15).¹

2. In the fall of 1997, Wedde determined that a machine capable of processing credit card transactions would be beneficial to his businesses, which at the time included the Pocatello Cab Company and a video store. (Wedde Depo. 29:21-30:3). Wedde had telephonic contact with someone from Loganberry Merchant Service ("Loganberry") for the purpose of obtaining the credit card processing equipment through a lease purchase arrangement. (Wedde Depo. 30:13-33:25).

3. On or about October 3, 1997, Wedde received from Loganberry, via facsimile, a Merchant Application. (Wedde Depo. 34:5-38:23, Wedde Depo. Ex. 5). The Merchant Application was executed by Wedde and returned to Loganberry by facsimile. (Wedde Depo. 33:16-38:25; Logan Depo. 41:22-44:25). A Merchant Receipt was also filled out and returned to Loganberry. (Logan Depo. 41:22-44:25, Logan Depo. Ex. 38).

4. On October 3, 1997, voided check number 2050 drawn on Pocatello Cab Co.'s

¹ The July 28, 2003 transcript of the deposition of Chuck Wedde is attached to the concurrently-filed Affidavit of Teresa A. Hill in Support of Defendant Leasecomm's Motion for Summary Judgment ("Hill Aff.") as Exhibit A. The August 27, 2003 transcript of the deposition of Rose Logan is attached to the Hill Aff. as Exhibit B. Citations to the transcripts throughout this document include the deponent's name followed by the page and line on which the testimony begins and ends. "___ Depo. Ex ___" refers to the corresponding deposition exhibits.

U.S. Bank checking account was faxed from the Pocatello Cab Company. (Wedde Depo. 39:8-41:21; Wedde Depo. Ex. 6; Plaintiffs' Response to RFA No. 6).² Loganberry received a copy of voided check number 2050 drawn on Pocatello Cab Co.'s U.S. Bank checking account on or about October 3, 1997. (Logan Depo. 50:4-10; Logan Depo. Ex. No. 42).

5. On or about October 20, 1997, Wedde received documentation from Loganberry, including a contract to purchase a credit card machine. (Wedde Depo. 42:3-45:4). Wedde executed the contract and returned it to Loganberry via facsimile. (Wedde Depo. 44:25-45:4). Wedde admits having signed a Leasecomm lease agreement. (Wedde Depo. Ex. 32, Answer to Interrogatory No. 16).

6. Wedde understood that he was committing himself to a \$39 monthly lease payment for 48 months with a \$78 down payment for the lease purchase of a credit card machine to be used for a business and/or professional purpose. (Wedde Depo. 42:3-48:16; Wedde Depo Ex. 7). The NON-CANCELLABLE EQUIPMENT LEASE AGREEMENT that Wedde signed read, in part, "...I have read and agree to the terms which appear on both sides of this Lease and I understand same....and I understand that my promise under this Equipment Lease Agreement became irrevocable and independent upon my acceptance of the leased equipment...." (Wedde Depo. Ex. 7; Logan Depo. Ex. 44) (emphasis in original).

7. Loganberry received a Non-Cancellable Equipment Lease Agreement executed by Wedde and faxed it on to Leasecomm. (Logan Depo. 47:13-49:2, 49:20-50:15, 55:14-57:15, 65:17-67:23; Logan Depo. Exs. 41 through 44). Loganberry is a vendor of credit card machines and is an independent contractor that has contracted with Leasecomm to furnish lease programs for these machines. (Logan Depo. at 24:12-4).

² Plaintiffs' Response to Defendant Leasecomm's First Set of Requests for Admission are attached to the Hill Aff. as Exhibit C. Citations to Plaintiff's Responses to Requests for

8. Wedde made a payment of \$78 to initiate the lease and authorized deductions from his bank account for the lease payments. (Wedde Depo. 112:7-12; Response to RFA No. 8).

9. On October 27, 1997, delivery and installation of the equipment was completed. (Wedde Depo. Exs. 10 and 11; Wedde Depo. 60:7-10, 112:13-20).

10. The credit card processing equipment was used in the business of Pocatello Cab Company as soon as October 28, 1997 to process a \$90 Mastercard transaction. (Wedde Depo. 54:7-17, 96:15-97:3; Wedde Depo. Ex. 20; Response to RFA No. 7).

11. On November 4, 1997, Leasecomm sent a letter to Wedde which again verified "complete and satisfactory delivery and installation on October 27, 1997." (Wedde Depo. Ex. 11; Wedde Depo. 66:9-12).

12. On November 17, 1997, Wedde wrote "canceled" on his copy of the lease agreement and stated that he returned the equipment close in time to November 17, 1997 because he received a copy of the lease agreement and "there was a whole another page of terms I didn't know existed." (Wedde Depo. 61:14-23, 63:15-64:8, 69:6-24).

13. Wedde admits that he knew when he signed the lease that it was "non-cancelable" and that there was nothing particular that caused him concern about the second page of the lease, "just that there was another page of terms that I wasn't aware of." (Wedde Depo. 62:21-63:25).

14. On November 18, 1997, Wedde instructed U.S. Bank that Card Service International and Leasecomm are no longer to have automatic withdrawals from his account. (Wedde Depo. 72:9-73:5; Wedde Depo. Ex. No. 12). On November 19, 1997, U.S. Bank processed a Stop-Payment order for the cancellation of an automatic electronic deduction in the

Admission are indicated by Plaintiff's Response to RFA No. ____.)

**DEFENDANT LEASECOMM CORPORATION'S STATEMENT OF MATERIAL
FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 4**

Boise-168725.3 0051523-00002

amount of \$39.00 for the account of Charles Wedde dba Pocatello Cab Co. based on Wedde's authority. (Wedde Depo. Ex. No. 13).

15. On March 8, 1998, Leasecomm sent Wedde a letter requesting bank account information to process direct debits for the lease payments, which Wedde does not dispute receiving. (Wedde Depo. 75:11-76:1; Wedde Depo Ex. 14).

16. On March 16, 1998, Leasecomm sent another letter to Wedde seeking payment of the past due balance of \$88.38 on his equipment lease. (Wedde Depo. Ex. 15). Wedde assumes he received the March 16, 1998 letter. (Wedde Depo. 76:15-77:4). In the March 16th letter, Leasecomm specifically notified Wedde of a possible negative impact on his credit record may result if he fails to fulfill his credit obligations. (Wedde Depo. 76:15-77:4; Wedde Depo Ex. 15).

17. On March 18, 1998, Wedde sent a handwritten note to Leasecomm stating, "I cancelled Leasecomm because they only send half the lease agreement. I send back theyre [sic] machine in Nov. and inform you also." (Wedde Depo. Ex. 16). In that same note, Wedde demanded refund of the money taken from his account from November through February or "I will be looking into criminal actions." (Wedde Depo. 77:8-78:20; Wedde Depo. Ex. 16).

18. On March 20, 1998, Wedde telephoned Leasecomm and said that he only received the front half of the lease and that is all the he signed. (Wedde Depo. 84:2-86:20; Wedde Depo. Ex. 18).

19. Leasecomm sent Wedde a letter dated March 22, 1998, notifying him that his account had been referred to Leasecomm's Legal Resolutions Department and enclosing an affidavit for Wedde to complete. (Wedde Depo. 80:5-21; Wedde Depo Ex. No. 17).

Leasecomm sought Wedde's cooperation in investigating his claim of dealer-misrepresentation and/or fraud and asked that he, "respond by filling in and returning the Affidavit enclosed. We

ask you to respond within 30 days, or we will assume that your problems were taken care of to your satisfaction.” (Wedde Depo. Ex. 17).

20. On March 30, 1998, Leasecomm documented another telephone call from Wedde during which Wedde claimed to have received only the front half of the lease. (Wedde Depo. 89:18-90:8; Wedde Depo Ex. 18). On March 30, 1998, Wedde completed an Affidavit of Claim wherein he states he was sent only half the lease agreement. (Wedde Depo. 92:16-95:11; Wedde Depo Ex. 19 at CW0007, Lcomm0021). Despite having dated the affidavit 03/30/98, it was not received by Leasecomm until August 19, 1998. (*Id.*).

21. Wedde claims he recognized forgery in November 1997 when he received a two-sided document, which arrived “two or three weeks” after he received the equipment. (Wedde Depo. 49:22-50:2; 63:15-64:25; Wedde Depo. Ex 32 at Answer to Interrogatory No. 20). In April 27, 1998, Wedde first informed Leasecomm that he believed his signature had been forged on one of the copies of the lease agreement. (Wedde Depo. 49:2-50:4, 80:22-81:5; Wedde Depo Ex. 8; Wedde Depo. Ex. 18 at Lcomm0063).

22. Wedde claims, without documentary support, that the Leasecomm delinquency showed up on his credit report “sometime after May 13, 1998” and also claims the Leasecomm delinquency showed up “January of 1998.” (Wedde Depo at 131:10-24).

23. Wedde says he was denied a Sears credit card on “May 20th ‘98” and “I contribute this to Leasecomm.” (Wedde Depo. 145:10-22).

24. On May 27, 1998, Wedde was mailed a Statement of Credit Denial, Termination or Change from All Fund Mortgage declining a application for credit on the basis of delinquent credit obligations. (Wedde Depo. 132:25-135:17; Wedde Depo. Ex. 30).

25. On May 28, 1998, Wedde was mailed a letter from Sears confirming the denial of his request for credit, stating the reasons as "history of delinquent credit obligations." (Wedde Depo. Ex. 31).

26. On July 1, 1998, Wedde's attorney sent a letter stating that "an individual at Loganberry signed Mr. Wedde's name to the contract." (Wedde Depo. 97:8-98:13; Wedde Depo. Ex. No. 21). Wedde continued to assert that someone from Loganberry had perpetrated the forgery when he filed his Complaint, which was verified by Wedde, on May 30, 2002. (Complaint at ¶¶ 6-7).

27. On July 20, 1998, Wedde's attorney sent a letter claiming that "someone from LeaseComm forged his name to the contract." (Wedde Depo. Ex. No. 22). Included with the July 20, 1998 letter was a letter from Linda Echo, indicating her opinion that "the document in question was not signed" by Wedde. (*Id.*). Wedde admits signing and submitting the first page of the Non-Cancelable Equipment Lease Agreement. (Wedde Depo. at 42:25-43:17). Wedde claims that another, two page, copy of the exact same Non-Cancelable Lease Agreement contains forged signatures. (Wedde Depo. at 48:17-50:12).

28. On July 24, 1998, Leasecomm sent Wedde a letter regarding evaluation of his claim, stating that, "Unless you return the attached questionnaire signed by you and notarized by a notary public AND INCLUDE COPIES OF TWO OFFICIAL DOCUMENTS (DRIVER'S LICENSE, PASSPORT, INCOME TAX RETURN, BUSINESS CERTIFICATE, ETC.) SHOWING CLEARLY YOUR SIGNATURE, we will continue to work under the assumption that your signature on our lease is valid." (Hill Aff., Ex. D). Wedde admits having received this letter. (Wedde Depo. Ex. 32 at Answer to Interrogatory No. 18).

29. On August 19, 1998, documents were sent from attorney Richard D. Vance to Leasecomm via facsimile, including an affidavit of Charles F. Wedde dated 03/30/98. (Wedde

Depo. 91:9-96:11; Wedde Depo. Ex. 19 at CW0006 and Lcomm0019). In the affidavit, Wedde indicates that he did not know who forged his name/signature on the lease, that he received and used the lease equipment. (*Id.*). In response to the question of why payments were made on the account if Wedde believed that he did not sign for the lease, Wedde stated "was going to buy it but didn't tell me all the terms." (Wedde Depo. Ex. 19 at CW0006).

30. On August 20, 1998, Leasecomm sent a letter to Wedde's attorney acknowledging receipt of Wedde's affidavit and advising that an investigation would be conducted into Wedde's claims concerning the lease. (Hill Aff., Ex. E). Wedde admits having received this letter. (Wedde Depo. Ex. 32 at Answer to Interrogatory No. 18).

31. On September 22, 1999, Wedde, through his attorney, provided Leasecomm additional signatures of Wedde as requested by Leasecomm on July 24, 1998. (Wedde Depo. 113:6-114:15; Wedde Depo. Ex. 24).

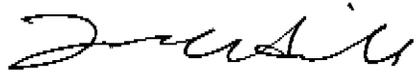
32. Leasecomm concluded its investigation and sent a letter dated February 11, 2000 to Wedde advising that Leasecomm was requesting the three credit bureaus used by Leasecomm (Equifax, TRW, TU) to remove any derogatory remarks which may have been reported and provided a copy of the UNIVERSAL DATA FORM used by Leasecomm to make corrections to Wedde's credit report. (Wedde Depo. 115:11-116:4, 116:13-1; Wedde Depo. Ex. 25). Wedde admits that Leasecomm no longer shows on his credit report. (Wedde Depo. 119:23-122:2; Wedde Depo. Ex. 27).

33. Wedde admits that much of his financial problems are due to his own failures to pay judgment(s) and his credit card bills. (Wedde Depo. 140:8-145:4; Wedde Depo. Ex. 27 at CW0043, CW0047-49).

34. Wedde alleges only economic loss. (Complaint, at ¶ 10 and at prayer for relief ¶ 1-2).

DATED this 21st day of July, 2004.

STOEL RIVES LLP

By: 
Teresa A. Hill
Attorneys for Defendant Leasecomm
Corporation

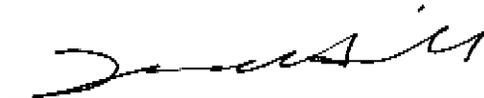
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of July, 2004, I caused to be served the foregoing **DEFENDANT LEASECOMM CORPORATION'S STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** upon the following in the manner indicated:

Curtis N. Holmes
ATTORNEY AT LAW
845 W. Center, Suite C-11
Pocatello, Idaho 83204

Via U.S. Mail
 Via Facsimile
 Via Overnight Mail
 Via Hand Delivery

By:



Tereasa A. Hill