

At a Term, Part _____ of the
Supreme Court of the State of New
York, held in and for the County of
_____, at the courthouse,
_____ Street, NY
on the ____ day of _____, 20__.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

Plaintiff

-against-

Defendant

**ORDER TO
SHOW CAUSE**

Index no.
R.J.I. no.

Upon reading the annexed affidavit of _____, sworn to the ____ day of
_____, 20__, and due consideration thereon having been had, it is

ORDERED that the attorney for plaintiff show cause at a Term, Part _____
(room _____) of this Court, to be held in and for the County of _____, at
_____ Street, on the _____ day of _____,
2005, at _____ a.m./p.m. or as soon thereafter as counsel can be heard, why an order
should not be made pursuant to CPLR § 5015(a)(1) vacating the default judgment entered
on _____, 20__, and setting the matter down for trial on a date convenient to the
court, and granting such other and further relief as may seem just and proper, and it is

FURTHER ORDERED that oral argument shall be required on the return date of
this motion, and it is

FURTHER ORDERED that pending the hearing of this motion, let all
proceedings on the part of the plaintiff, its attorneys and agents and any sheriff, for the
enforcement of the judgment be stayed, and it is

FURTHER ORDERED that service of a copy of this order and papers on which
it was granted on the plaintiff's attorney, _____, by
personal delivery at its office at _____, or by certified

mail, return receipt at _____, by the _____ day of _____, 20__, shall be good and sufficient service thereof.

Enter,

Supreme Court Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

AFFIDAVIT

Plaintiff

-against-

Defendant

Index no.

STATE OF NEW YORK)
) ss.:
COUNTY OF)

_____, being duly sworn, deposes and says:

1. That he is the Defendant named herein, and submits this Affidavit in support of his motion to vacate the default judgment.
2. That the above-entitled action was brought for monies allegedly owed for a deficiency following sale of a repossessed _____.
3. That the default judgment was entered on _____ by the County Clerk for _____ dollars and _____ cents (\$_____).
4. That he cannot read or write.
5. That when he received the Summons and Complaint, he called the Plaintiff's Attorney and was told that he either had to make arrangements to pay in full or that the attorney would "see him in court." That the attorney did not tell him when the court date would be. That he believed that he was answering the Summons and Complaint by calling the Plaintiff's Attorney, and that he expected to have his day in court.
6. That the Plaintiff was aware that he could not read or write.
7. That when he found out that his bank account was frozen, he called the Plaintiff's Attorney again.
8. That he (explains the merits of his defense).

9. That he submits that he is entitled to relief from the default judgment due to excusable default in not knowing that he had to submit a written Answer in order to have his day in court, due to misrepresentation on the part of the Plaintiff, and due to his having a meritorious defense.

10. That no previous application for the relief herein prayed for has been made.

WHEREFORE, deponent respectfully prays that the judgment be vacated and set aside and that the default be opened and defendant be permitted to interpose an answer in this action and that the plaintiff and its representatives be stayed pending the determination of this motion from taking any proceedings to enforce or collect the judgment and for such other and further relief as to this court may seem just and proper.

Signature above- name typed below line

Sworn to before me this ____ day of _____, 20__

Notary Public: State of New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

Plaintiff
-against-

**ANSWER WITH
AFFIRMATIVE
DEFENSES and
COUNTERCLAIMS**

Index no.

Defendant

Defendant, _____, for his Answer to the Complaint of _____
_____, states as follows:

1. That he lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 1 of the Complaint.
2. That he admits the allegations contained in paragraph 2.
3. That as to the allegation contained in paragraph 3 of the Complaint, he admits that he entered into a lease agreement with the Plaintiff for a _____. He does not know the date.
4. That as to the allegation contained in paragraph 4 of the Complaint, that he made a down payment of five hundred dollars (\$500.00). That he then made payments of approximately two hundred dollars (\$200.00) per month for six months, but then held subsequent payments because _____ did not teach him how to operate the _____ properly as _____ was obligated to do. That he then made an additional payment of two thousand dollars (\$2,000.00) after the Plaintiff stated that it would send someone out to teach him how to use the _____ properly. That subsequently, he agreed to have the Plaintiff repossess the bender based on the Plaintiff's representation that the repossession was being done in full satisfaction of the note.
5. That he lacks knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 5 of the Complaint, in that the Defendant does not set forth the specifics of the "commercially reasonable sale."

6. That he denies the allegations contained in paragraph 6, 7, 8, and 9 of the Complaint.

AFFIRMATIVE DEFENSES

7. **PAYMENT.** As and for a first affirmative defense, the Defendant states that the Plaintiff has been paid in full based on payments made and return and repossession of the bender.

8. **RELEASE.** As and for a second affirmative defense, the Defendant states that the Plaintiff released him from any further obligation on the note based on its agreement for the return and repossession of the bender.

9. **DISABILITY.** As and for a third affirmative defense, the Defendant states that the lease agreement was null and void due to the Defendant's disability. The Plaintiff knew that the Defendant could not read or write, and took advantage of that disability.

10. **FRAUD.** As and for a fourth affirmative defense, the Defendant states that B_____ and the Plaintiff acted separately and/or together to have him purchase the _____ and incur expense, when they had no intention of following through on their obligation to teach him how to use the _____ properly. The Defendant relied on their misrepresentations to his detriment.

COUNTERCLAIMS

11. The Defendant sustained damages of approximately _____ hundred dollars (\$_____) in _____ that was wasted due to incomplete instruction on use of the _____.

12. The Defendant sustained damages of approximately _____ dollars (\$_____) for payments made on the lease for the _____, when the _____ was of no use to him.

WHEREFORE, Defendant _____ requests that the court dismiss the Complaint of _____ as assignee of _____, and grant such other and further relief as to the court seems just and proper.

Signature above line- name typed below

STATE OF NEW YORK)
) ss.:
COUNTY OF)

_____, being duly sworn, states that he is the Defendant in this action and the foregoing Answer is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Signature above line –name typed below

Sworn to before me this ___ day of _____, 20__

Notary Public: State of New York