

Defenses to Credit Card and Cell Phone Claims



COMMUNITY
DEVELOPMENT
PROJECT

No Personal Jurisdiction

To properly sue you, a plaintiff must follow certain rules to notify you of the lawsuit.

The plaintiff must:

- serve you with notice in person at your actual home or place of business.
- if unable to serve you in person, post the notice on your door and mail you a copy.

The lawsuit must be brought in either the county where you live or the county where you signed the credit card or cell phone agreement. If you think you are being sued in the wrong county, you can raise a no personal jurisdiction defense.

Too Late (Statute of Limitations)

A creditor cannot make a claim against you in court if it waited too long to sue. An important law, the statute of limitations, says that the creditor can only sue you for a claim that is based on a contract within 6 years of when you made your last payment. If the debt is a cell phone debt, the Federal Communications Act of 1934 states that all lawsuits must be brought within 2 years of the default.

Not Original Creditor

The following defenses only apply if the plaintiff is not the original creditor. Often this is the case. The original creditor may have sold the debt to a third party debt buyer. There are two specific defenses you can make under this defense:

- *Chain of Title*: If you claim (in the answer or before the judge) that you don't know who the plaintiff is, the plaintiff will have to prove that they purchased the debt.

- *Not Licensed*: Plaintiff is not licensed by the department of consumer affairs as a debt collector. Every debt collection agency in New York must be licensed. Without a license, the agency cannot lawfully collect a debt. Call the Department of Consumer Affairs (DCA) at (212) 487-4110 to check if the plaintiff is a licensed debt collector, or go to the DCA website at www.nyc.gov/html/dca/html/home/home.shtml and do an instant license check.

Identity Theft

Identity theft is a defense that you did not apply for, receive or use the credit card or cell phone account in question. If you use this defense, you should say (in the answer and before the judge) that you did not apply or receive the credit card or cell phone and that you did not authorize the use. It is also a defense that you notified the creditor of an unauthorized use but that the unauthorized charges continued.

Mistaken Identity

The cell phone or credit card belongs to someone else.

Plaintiff is claiming the wrong amount

You may agree that you owe a debt to the plaintiff, but that the debt you owe is smaller than what the plaintiff claims.

To use these defenses, **always** demand the following documents from the plaintiff:

- A signed copy of the credit card or cell phone agreement
- The itemized bills that are the subject of the lawsuit
- Proof that the plaintiff owns the debt, if the plaintiff is not the original credit card or cell phone company

TIPS

- Raising a “no personal jurisdiction” defense can be tricky. Take advantage of referral services, free legal aid, & court resources to seek advice.
- If you are being sued on a very old claim and you made a small payment recently because you were harassed or misinformed, you can still try the “Too Late” defense.
- Even if you learn that the plaintiff is a licensed debt collector you should check the complaint to see if it affirmatively states that the plaintiff is a licensed debt collector. The plaintiff must make this statement in the complaint.
- Do not give your Social Security Number (SSN) to the plaintiff. If necessary to prove they have the wrong person, insist that the plaintiff gives you the SSN of the original account holder first. If it is different, ask the judge to review the papers without entering your SSN on the public record.