

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 13-4428-A

LLOYDS BANK PLC, f/k/a Lloyds TSB Bank plc,
in its capacity as Facility Agent,

Plaintiff,

v.

SERVICE POINT USA, INC.,

Defendant, and

CITIZENS BANK OF MASSACHUSETTS,

Trustee Process Defendant.

AFFIDAVIT OF MICHAEL J. FENCER, ESQ.

I, Michael J. Fencer, hereby make oath and depose as follows:

1. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts, and am a partner in the law firm of Jager Smith P.C., which maintains offices for the practice of law at One Financial Center, Boston, Massachusetts 02111.

2. I represent in this civil action plaintiff Lloyds Bank, plc, f/k/a Lloyds TSB Bank plc, in its capacity as Facility Agent for certain secured lenders (the "Agent") as creditors of defendant Service Point USA, Inc. ("SPU") pursuant to one or more guarantees of indebtedness given by SPU, and as a secured party holding a valid, perfected, first priority security interest in all, or substantially all of the assets of SPU. In that capacity, I am fully familiar with, and if called upon to do so would be competent to testify as to the facts and circumstances set forth herein.

3. On December 18, 2013 the Agent filed a *Complaint* (the "Complaint") against SPU demanding a judgment for money damages for, *inter alia*, SPU's indebtedness to the Agent under a certain *Amendment and Restatement Agreement* and Existing Facility Agreement, which indebtedness is secured under a certain *Collateral Agreement*.

4. On December 28, 2013 SPU was duly served by making service of process upon SPU's registered agent of record, Kevin Eyers, with, *inter alia*, a summons and a true and accurate copy of the Complaint. A true and accurate copy of the *Proof of Service of Process* is annexed hereto as Exhibit A.

5. SPU has failed to plead or otherwise respond to the Complaint. On January 22, 2013 I caused a *Request for Entry of Default* to be filed with the clerk of this Court and served upon SPU. A true and accurate copy of the *Request for Entry of Default* is annexed hereto as Exhibit B. Since that time, the clerk of this Court has not yet entered SPU's default in this civil action.

6. As a Massachusetts business corporation, SPU is not in the military, nor is it an infant or an incompetent person, or an incapacitated person as defined in Mass. Gen. Laws ch. 190B.

7. During the course of this civil action, Jager Smith, on behalf of the Agent, prepared and initiated the Complaint against SPU and the motions for immediate appointment of a receiver, attachment by trustee process, and preliminary injunction and causing the same to be served on SPU; attended hearings on the aforementioned motions; conducted numerous telephonic conferences with the Agent and the Court appointed special receiver; and prepared this motion as well as a motion and supporting papers for turnover of the Agent's collateral held by the special receiver, among other things. All of the fees incurred were reasonable and necessary to the prosecution of this civil action.

8. The following professionals provided the following number of hours of professionals services at the hourly rates stated: (i) Michael J. Fencer (partner), 77.50 hours at \$450 per hour; (ii) Howard P. Blatchford, Jr. (partner), 40.30 hours at \$375 per hour; (iii) Timothy J. Durken (associate), 9.80 hours at \$350 per hour; (iv) Kristin A. Slack (associate), 52.70 hours at \$275 per hour; (v) Kathleen E. Perkins (paralegal), 1.80 hours at \$150 per hour; and (vi) Emily E. Perkins (paralegal), 0.70 hours at \$150 per hour.


9. In addition, Jager Smith, on behalf of the Agent, made disbursements for filing fees, copying and facsimile charges, courier and delivery services, computerized legal research fees, and process server fees. Each of these disbursements was reasonable and necessary to the prosecution of this civil action.

10. In total, the Agent incurred reasonable attorney's fees and costs through February 28, 2014 in the amounts of \$68,285.00 and \$3,223.04, respectively, for a total of \$71,508.04.

11. Based on my training and experience as a commercial litigator, it is my opinion that the foregoing fees and expenses were reasonable and necessary under the facts and circumstances of this civil action.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: March 19, 2014


Michael J. Fencer

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each other party by mail (by hand) on 3/19/14

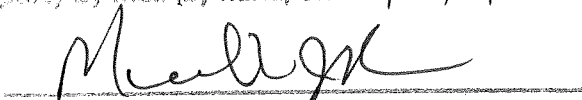


Exhibit A

Commonwealth of Massachusetts

SUFFOLK, ss.



SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION
No. 13-4428 A
(AFFIX FILING STAMP HERE)

Lloyds Bank, PLC fka , Plaintiff(s)
v.
Service Point USA, Inc. , Defendant(s)

SUMMONS AND RESTRAINING ORDER

To the above-named Defendant: Service Point USA, Inc.

You are hereby summoned and required to serve upon Jager Smith P.C. , plaintiff's attorney, whose address is One Financial Center Boston, MA 02111 , an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You also are required to file your answer to the complaint in the office of the Clerk of this court at Boston either before service upon plaintiff's attorney or within a reasonable time thereafter.

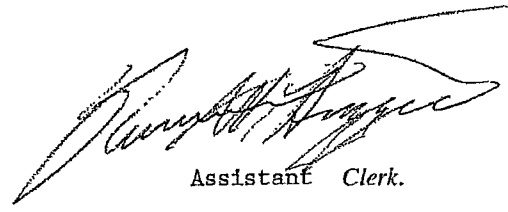
Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim that you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

WE ALSO NOTIFY YOU that application has been made in said action, as appears in the complaint, ^{re: MOTIONS} for a preliminary injunction and that a hearing upon such application will be held at the court house at said Boston in courtroom 306 of said court on Monday the thirtieth day of December A.D. 2013, at two o'clock ~~AM~~ P.M. at which you may appear and show cause why such application should not be granted.

In the meantime, until such hearing, WE COMMAND YOU, said defendant
and your agents, attorneys and counsellors, and each and every one of them, to desist and refrain from

SEE ATTACHED ORDER

Witness, Barbara J. Rouse, Esquire, at Boston, the twenty-fourth day of
December, in the year of our Lord two thousand thirteen.


Assistant Clerk.

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on December 28, ~~200~~²⁰¹³, I served a copy of the within summons and restraining orders, together with a copy of the complaint in this action, upon the within named defendant, in the following manner (See Mass. R. Civ. P. 4(d)(1-5):

By delivering In-Hand to Kevin Evers - Registered Agent for Service Point USA, Inc. at his home, 155 Walpole St. Dover, MA @ 5:00 p.m.

Dated: December 30, ~~200~~²⁰¹³.

William H. Delaney III
Special Process Server
William H. Delaney III

N.B. TO PROCESS SERVER:
PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

December 28, ~~200~~²⁰¹³.

*See Attached List of Documents Served.

Exhibit B

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 13-4428-A

LLOYDS BANK PLC, f/k/a Lloyds TSB Bank plc,)
in its capacity as Facility Agent,)
)
Plaintiff,)
)
v.)
)
SERVICE POINT USA, INC.,)
)
Defendant, and)
)
CITIZENS BANK OF MASSACHUSETTS,)
)
Trustee Process Defendant.)

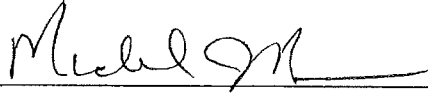
REQUEST FOR ENTRY OF DEFAULT

Plaintiff Lloyds Bank, plc, f/k/a Lloyds TSB Bank plc, in its capacity as Facility Agent hereby requests, pursuant to Mass. R. Civ. P. 55(a), that the Clerk of this Court enter the default of defendant Service Point USA, Inc. ("SPU") in the above captioned civil action. The undersigned counsel certifies that SPU has failed to plead or otherwise defend in this civil action as provided by the Massachusetts Rules of Civil Procedure.

[Remainder of page intentionally left blank.]

LLOYDS BANK, PLC,
f/k/a Lloyds TSB Bank, plc,
in its capacity as Facility Agent,

By its attorneys,



Michael J. Fencer (BBO No. 648288)
Howard P. Blatchford, Jr. (BBO No. 045580)
JAGER SMITH P.C.
One Financial Center
Boston, Massachusetts 02111
telephone: 617-951-0500
facsimile: 617-951-2414
email: mfencer@jagersmith.com
hblatchford@jagersmith.com

Dated: January 22, 2014

I HEREBY CERTIFY THAT A TRUE
COPY OF THE ABOVE DOCUMENT WAS
SERVED UPON (EACH PARTY APPEARING PRO SE
AND) THE ATTORNEY OF RECORD FOR EACH OTHER
PARTY BY MAIL (BY HAND) ON 1/22/14

