

ONEIDA SMALL BUSINESS, INC.  
3812 N. County Line Road  
Oneida, WI 54155

Plaintiff,

**COMPLAINT**

vs.

CASE NO.: 13 CV

DUCK CREEK COFFEE COMPANY, LLC  
2667 W. Mason Street  
Green Bay, WI 54304

Case Code: 30304

And

PAUL K. NINHAM  
190 W. Meadow Drive  
Oneida, WI 54155

And

JILL MARTUS-NINHAM  
190 W. Meadow Drive  
Oneida, WI 54155

Defendants.

FILED  
NOV 15 2013

CLERK OF COURTS  
BROWN COUNTY, WI

NOW COMES the Plaintiff, Oneida Small Business, Inc., by its attorneys, LEWIS & VAN SICKLE, LLC, and as and for its complaint against the defendants alleges and shows the Court as follows:

**PARTY  
PLAINTIFF**

1. Plaintiff, Oneida Small Business, Inc., is a Non-Stock Corporation, duly organized and existing under and by virtue of the laws of the State of Wisconsin. The principal address and place of business of such Plaintiff is 3812 N. County Line Road, Oneida, Wisconsin 54155. Plaintiff is engaged in the issuance of small business loans.

**PARTY**  
**DEFENDANT**

2. Defendant, Duck Creek Coffee Company, LLC, is a limited liability company doing business in the State of Wisconsin with a principal business address 2667 W. Mason Street, Green Bay, Wisconsin, 54304 and a Registered Agent Paul K. Ninham.

3. Defendant, Paul K. Ninham, is an adult resident of the State of Wisconsin with a last known principal address of 190 W. Meadow Drive, Oneida, Wisconsin, 54155. Defendant, Paul K. Ninham, is the Registered Agent and a Member of Duck Creek Coffee Company, LLC and the spouse of Defendant, Jill Martus-Ninham.

4. Defendant, Jill Martus-Ninham, is an adult resident of the State of Wisconsin with a last known principal address of 190 W. Meadow Drive, Oneida, Wisconsin, 54155. Defendant, Jill Martus-Ninham, is a Member of Duck Creek Coffee Company, LLC and the Defendant, Paul K. Ninham's spouse.

**CAUSE OF ACTION**

5. Defendants, Paul K. Ninham and Jill Martus-Ninham, as Members of and on behalf of Defendant, Duck Creek Coffee Company, LLC, on or around August 7, 2008, executed a Business Note wherein Defendants borrowed money from the Plaintiff subject to the terms and conditions set forth in said note. The principal amount borrowed by the Defendants was \$70,000.00.

6. Defendants, were to make monthly installment payments in the sum of \$1,225.00.

7. On August 7, 2008, Defendants, Paul K. Ninham and Jill Martus-Ninham, as Members of and on behalf of Defendant, Duck Creek Coffee Company, LLC, signed a General Business Security Agreement pledging assets of the business as collateral for the Business Note.

8. On August 7, 2008, Defendants, Paul K. Ninham and Jill Martus-Ninham signed a Continuing Guaranty (Unlimited), personally guaranteeing the loans of Duck Creek Coffee Company, LLC.

9. On August 28, 2013, Defendants were forwarded notice of the past due nature of their account and demand for payment was made.

10. Defendants are in breach of the Business Note for failure to make payments as required by the terms of the Note and are therefore in default on the loan.

11. As of August 22, 2013, the sum of \$77,207.09 is due and owing to Plaintiff, Oneida

Small Business per the terms of the Business Note. Per the terms of the Business Note and defendants breach of the same, Plaintiff, Oneida Small Business, Inc., is demanding payment in full. The total sum of \$77,207.09 consists of \$70,000.00. principal, \$6,043.34 in interest and \$1,163.75 in late charges. The Business Note collects interest at 4.00%.

### JURISDICTION

12. This Court has jurisdiction over Defendant according to Sec. 801.05(6), Stats., as this action arises out of activities of Plaintiff within the State of Wisconsin.

### VENUE

13. The venue in this action is properly in Brown County, Wisconsin pursuant to Sec. 801.50(2), Stats., in that the claim arose within the County of Plaintiff's principal operation of business.

WHEREFORE, Plaintiff demands judgment:

1. For a money judgment against Defendants, Duck Creek Coffee Company, LLC, Paul K. Ninham, personally, and Jill Martus-Ninham, personally, jointly and severally in the sum of \$77,207.09 plus pre and post judgment interest owing thereon, to include reasonable attorneys fees and costs.
2. A Writ of Replevin of all property secured by the General Business Security Agreement and Note; and
3. For costs and disbursements of this action, including reasonable attorney's fees.

Dated this 13<sup>th</sup> day of November, 2013.

LEWIS & VAN SICKLE, LLC

By: 

Andrew A. Van Sickle 1022263  
Attorney for the Plaintiff, Oneida Small  
Business, Inc.

LEWIS & VAN SICKLE, LLC  
P.O. Box 107  
Pulaski, WI 54162  
920-822-2777

ONEIDA SMALL BUSINESS, INC.  
Plaintiff,

**ANSWER**  
CASE NO. 13 CV 1835

vs.

DUCK CREEK COFFEE COMPANY, LLC,  
PAUL K. NINHAM and  
JILL MARTUS-NINHAM,  
Defendants.

FILED  
DEC 04 2013

The Defendants, Duck Creek Coffee Company, LLC, Paul K. Ninham and Jill Martus-Ninham, by their attorneys, Olson, Kulkoski, Galloway & Vesely, S.C., by Lawrence G. Vesely, as and for an Answer to Plaintiff's Complaint states as follows:

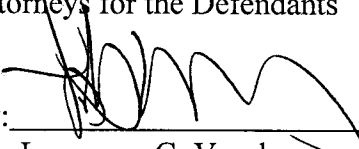
1. Admits the allegations in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 13 of Plaintiff's Complaint.
2. Denies the allegations in Paragraph 11 of Plaintiff's Complaint.

WHEREFORE, Defendants, Duck Creek Coffee Company, LLC, Paul K. Ninham and Jill Martus-Ninham request relief as follows:

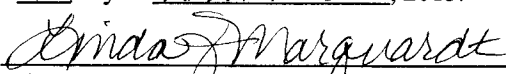
- A. For a dismissal of Plaintiff's Complaint;
- B. For costs and attorneys fees as provided by law; and
- C. For such other relief the Court deems just and equitable under the circumstances.

Dated this 15 day of November, 2013.

**Olson, Kulkoski, Galloway & Vesely, S.C.**  
Attorneys for the Defendants

By:   
Lawrence G. Vesely  
416 So. Monroe Avenue - PO Box 368  
Green Bay, WI 54305-0368  
Telephone (920) 437-5405  
State Bar Code #1014713  
E-mail address: larry@veselylaw.com

A true copy of the within was served by mail upon  
all attorneys of record pursuant to §801.14(2), Wis.Stats.  
This 29th day of November, 2013.

By:   
Linda J. Marquardt, Legal Assistant to Lawrence Vesely  
To: Attorney Andrew A. Van Sickle



ONEIDA SMALL BUSINESS, INC.  
3812 N. County Line Road  
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And

PAUL K. NINHAM  
190 W. Meadow Drive  
Oneida, WI 54155

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Defendants.

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FILED  
JAN 03 2013

CLERK OF COURTS  
BROWN COUNTY, WI

THIS COMMUNICATION IS FROM A  
DEBT COLLECTOR. THIS IS AN  
ATTEMPT TO COLLECT A DEBT. ANY  
INFORMATION OBTAINED WILL BE  
USED FOR THAT PURPOSE

**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

**ISSUE**

Plaintiff, Oneida Small Business, Inc, should be granted summary judgment against the Defendants, Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company, LLC.

**FACTS**

On August 7, 2008, Defendant, Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company, LLC., delivered to Plaintiff a Business Note for consideration. The Note was in the sum of \$70,000.00.



Defendants, Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company, LLC, are in default on the note for their failure to comply with the terms of said note by failing and neglecting to pay the principal balance, accrued interest, and late charges as the same became due. Defendants, Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company, LLC., have failed to cure the default. As of August 22, 2013, there is owed the sum of \$77,207.09, being principal, accrued interest, late charges. Interest against the principal accrues at 4.0% per annum.

Defendants, Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company, LLC., in their Answer to the Summons and Complaint in this case, did not deny they were in default on the note.

As a result of the defaults in payment, Plaintiff, as it is entitled to do under the note, has declared the indebtedness immediately due and payable and demands payment in full and surrender of the business assets which secures repayment of the indebtedness.

#### ARGUMENT

Sec. 802.08(2), Wis. Stats. states: **“The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”** (Emphasis Added.)

Defendants, Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company, LLC, executed and delivered to Plaintiff a Note for consideration. Defendants Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company, LLC., have defaulted on the note by failing to comply with the terms of the note and neglecting to pay the principal balance, accrued interest, and late charges as the same became due.

In their answer, Defendants, Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company, LLC, failed to state any valid counter claim or defense relating to their failure

to make payments on the note as they became due.

In Taterka v. Ford Motor Co. 86 Wis.2d 140, 144 (Wis. 1978), the Supreme Court stated: “We have held that summary judgment may be granted where there is no genuine issue as to any material fact and a party is entitled to judgment as a matter of law.”

There is no genuine issue as to any material fact.

Defendants, Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company, LLC., are in default on the note for failure to comply with the terms of said note by failing and neglecting to pay the principal balance, accrued interest and late charges as the same became due.

In Heck & Paetow Claim Service, Inc. v. Heck 93 Wis.2d 349, 355 (Wis. 1979), the Supreme Court stated: “The purpose of summary judgment is to obviate the need for a trial where there is no genuine issue as to any material facts.”

The Supreme Court went on to say, in Heck, 356, “If the trial court has determined the movant has proved to the court’s satisfaction that there is no genuine issue of material fact as a matter of law, then the trial court should enter judgment.”

### **CONCLUSION**

Defendants, Paul K. Ninham and Jill Martus-Ninham, as a member of Duck Creek Coffee Company LLC, executed a note in favor of the Plaintiff, Oneida Small Business, Inc. Paul K. Ninham and Jill Martus-Ninham personally guaranteed the Note. Defendants, Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company, LLC, are in default on the note for their failure to comply with its terms by failing and neglecting to pay the principal balance, accrued interest, and late charges as the same became due. Plaintiff, as it is entitled to do under the note, has declared the indebtedness due and payable.

There is no genuine issue as to any material fact. Defendants, Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company, LLC., are in default on their note, which Defendants admit to in their Answer.

Business, Inc, and against the Defendants, Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company, LLC, jointly and severally.

Based on the foregoing, Plaintiff, Oneida Small Business, Inc., respectfully moves the Court for Summary Judgment.

Dated this the 27<sup>th</sup> day of December, 2013.

Respectfully submitted,  
LEWIS & VAN SICKLE, LLC

By: 

Andrew A. Van Sickle, 1022263  
Attorney for Oneida Small Business,  
Inc.

LEWIS & VAN SICKLE, LLC  
P.O. Box 107  
Pulaski, WI 54162  
920-822-2777



ONEDIA SMALL BUSINESS, INC.  
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JAN 33  
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BROWN COUNTY, WI

And

PAUL K. NINHAM  
190 W. Meadow Drive  
Oneida, WI 54155

THIS COMMUNICATION IS FROM A  
DEBT COLLECTOR. THIS IS AN  
ATTEMPT TO COLLECT A DEBT. ANY  
INFORMATION OBTAINED WILL BE  
USED FOR THAT PURPOSE

And

JILL MARTUS-NINHAM  
190 W. Meadow Drive  
Oneida, WI 54155

Defendants.

---

**AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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STATE OF WISCONSIN   )  
  )ss.  
COUNTY OF BROWN    )

Andrew A. Van Sickle, being first duly sworn on oath, deposes and states as follows:

1. That the affiant is an attorney licensed to practice in the State of Wisconsin and has been retained by the plaintiff, Oneida Small Business Inc., in the above captioned matter.
2. That affiant makes this Affidavit upon information and belief as supplied to him

by the Plaintiff and as supplied to him by defendants, Paul K. Ninham, Jill Martus-Ninham, and Duck Creek Coffee Company, LLC, in their Answer dated November 29, 2013.

3. This affidavit is made in support of the Plaintiff's Notice of Motion and Motion for Summary Judgment attached hereto.
4. Defendants, Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company LLC, in their Answer, admit on that on August 7, 2008, Defendants, delivered to plaintiff a Business Note for consideration.
5. The note is in default because of Defendants, Paul K. Ninham, Jill Martus-Ninham and Duck Creek Coffee Company LLC, failed to comply with the terms of said note by failing and neglecting to pay the principal balance, accrued interest and late charges as the same became due. Defendants admit in their Answer that they are currently behind on the scheduled note payments.

WHEREFORE the plaintiff requests the following:

- A. That a judgment in the amount of \$77,207.09 be entered against the defendants, jointly and severally, in addition to interest, taxes, insurance, costs of suit and attorney fees.
- B. That Plaintiff have such other and further relief as may be just and equitable.
- C. For costs and disbursements of this action, including reasonable attorney's fees.

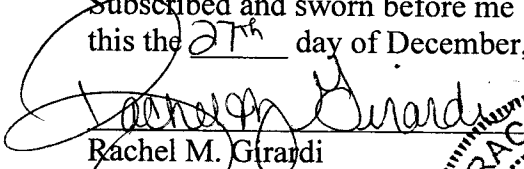
Dated this the 27<sup>th</sup> day of December, 2013.

LEWIS & VAN SICKLE, LLC

By: 

Andrew A. Van Sickle, 1022203  
Attorney for Oneida Small Business, Inc.

Subscribed and sworn before me  
this the 27<sup>th</sup> day of December, 2013.

  
Rachel M. Girardi  
State of Wisconsin, Notary Public  
My commission expires 05/22/11

