

area" as required by regulation 91.32, 25 Pa. Code Sect. 91.32. Trautner appealed to the Environmental Hearing Board which sustained his appeal and directed DER to issue a permit to Trautner for the construction and operation of an individual on-lot sewage system. On DER's appeal, the Commonwealth Court affirmed.

Both the Board and the Commonwealth Court found that Trautner's property was located in an isolated area and noted that future growth of the township might alter the present status of the area. The Court then considered DER's regulations regarding Official Plans, and concluded that if a plan does not permit the installation of a particular type of sewage system, "... the property owner is left with no sewage permit and no opportunity to use his land in what is otherwise a completely lawful manner. This situation is confiscatory and tantamount to a taking without due process of law." (citing cases)

Again, the township and the Commonwealth seek to distinguish the case on factual grounds. Trautner applied for a permit to install a self-contained unit, a chlorinator plant, that would discharge the effluent into a stream which went dry sometimes during the year; a stream that was located near a village and ran along houses and areas used for farming. There was testimony at the hearing that there should be a permanent system in the area; that there was a potential need for it.¹ The basic factual ground for authorizing the treatment plant, however, was that Trautner lived in an isolated area.

Bricker's land is in an isolated area and under the *Trautner* doctrine he cannot be "... denied his right to use his property until such time as *the municipality* (emphasis in the original) has satisfied DER that sewage disposal on the property is in conformity 'with a comprehensive program of water quality management'." He cannot be required to motivate the township to comply with DER regulations for the adoption of an amendment of an Official Plan and satisfy DER that his plan for sewage disposal is otherwise acceptable.

As Bricker's counsel argued, he is not asking for a license to pollute. He is requesting authority to install a pollution control device which has been granted to other township residents. The kind of use that is anticipated of any residence constructed on this lot would not generate an alarming amount of sewage. Bricker has presented a statement attesting that he has made arrangements for the holding tank to be

¹See the record in the case before the Environmental Hearing Board.

pumped. The township has the authority to insist that the tank be emptied at regular intervals and for failure to do so to prohibit its further use and apply other sanctions. While in *Shell* the Environmental Hearing Board required a bond of the company to guarantee its compliance with these regulations, it did so only after the company volunteered to provide it--a bond apparently relying solely on the good faith and credit of the company, not a surety bond.

In its findings the Board of Supervisors did not state that holding tanks were unsafe and were not a proper alternative to an on-site disposal system. Actually 25 Pa. Code Sect. 73.81 makes provision for their use, notes the requirements for regular service and maintenance and then includes the prohibition of their installation except in an area approved for their use in the Official Plan. It is this regulation and the conclusions that the Board of Supervisors reached pursuant thereto that were found in *Trautner* to be confiscatory and tantamount to a taking without due process, and which the Board in *Shell* found to be unauthorized by the Sewage Facilities Act, supra.

For these reasons the adjudication of the Board of Supervisors of December 10, 1976, affirming the action of the Sewage Enforcement Officer in denying Bricker's application for a sewage disposal system (a holding tank) must be reversed.

ORDER OF COURT

NOW, November 22, 1977, the action of the Board of Supervisors of Metal Township in denying Eugene R. Bricker a permit to install a septic tank on his property is reversed and the Sewage Enforcement Officer of Metal Township is hereby ordered to issue a holding tank permit to Eugene R. Bricker for the property in Metal Township, Franklin County, Pennsylvania, as requested in Application No. 25002.

INVESTORS CONSUMER DISCOUNT COMPANY OF
CHAMBERSBURG v. FAHNESTOCK, C.P. Franklin County
Branch, A.D. 1977-366

Assumpsit - Pleading - More Specific Pleading - Citation of Statutes and Regulation Section - Concise and Summary Form

1. The material fact that the rate of interest charged is in excess of the legal rates may be pleaded with sufficient specificity by citation of the statute section on interest rates.

2. Material facts of non-compliance with the Truth in Lending Act and Regulation Z may not be pleaded with sufficient specificity by a citation of statutory or regulatory sections containing multiple provisions and references to other sections and subsections as these provide neither the conciseness nor the summary form required of pleadings by Pa. R.C.P. 1019(a).

Donald L. Kornfield, Esq., Attorney for Plaintiff

David Woodward, Esq., of Legal Services, Attorney for Defendant

OPINION AND ORDER

KELLER, J., October 27, 1977:

Investors Consumer Discount Company of Chambersburg commenced its action in assumpsit against the defendants by the filing of a complaint on July 19, 1977. The complaint alleged that the defendants executed a certain note on October 15, 1971, payable to the plaintiff and defaulted on the payment of the same; that there is due and owing the plaintiff the sum of \$8,397.98, plus 15% attorney's fee for a total of \$9,657.68, plus interest. The defendant, Peggy J. Fahnestock, filed her answer containing new matter and counterclaim on August 8, 1977. In her answer she admitted all of the allegations of the complaint except the balance due, which she demanded proof for and the attorney's collection fee which she alleged was excessive, unreasonable, unconscionable and, as a part of a contract of adhesion, unenforceable as contrary to public policy. Under new matter the defendant alleged the rate of interest charged by the plaintiff was in excess of the legal rate authorized under the laws of the Commonwealth and, therefore, unenforceable. In her counterclaim the defendant in paragraphs 12 through 16 alleges violation of various sections of the Federal Truth in Lending Act, Regulation Z, promulgated thereunder by the Federal Reserve Board, and claims that the plaintiff is indebted to her in twice the amount of the finance charge (\$779.76), or the maximum sum of \$1,000.00, together with costs and a reasonable attorney's fee.

The plaintiff filed its praecipe for the entry of default judgment against the defendant, Ralph E. Fahnestock, on August 17, 1977. On August 18, 1977, the plaintiff filed preliminary objections in the nature of a motion for a more specific pleading as to defendant's paragraphs 8, 12, 13, 14 and 15. Briefs were submitted and argument was held on August 6, 1977.

The defendant's paragraph 8 under new matter alleges:

"The amount and rate of interest charged by Plaintiff as shown in the Judgment Note (Defendant's Exhibit A) is in excess of the legal rate of interest authorized under the laws of the Commonwealth of Pennsylvania, including the Consumer Discount Company Act, 7 P.S. Sect. 6201, 6213, 6214 (B), and, therefore, is unenforceable as an illegal amount and rate of interest and as contrary to public policy."

The defendant's motion for a more specific pleading as to this paragraph complained that paragraph 8 is insufficiently specific in that it fails to state specifically what the interest rate is, how it is in violation of the law cited, and how the interest rate constitutes a violation of public policy."

While we do not feel the citation of sections of a law represents good pleading, and does tend to obscure the issue the pleader intended to raise, we find paragraph 8 has with specificity alleged the material fact that the rate of interest charged is in excess of the legal rate of interest authorized under the laws of Pennsylvania. We consider the remainder of the paragraph as surplusage which the plaintiff need not reply to. We further conclude that paragraph 8 is sufficiently clear that the plaintiff can file a responsive reply. Therefore, the plaintiff's first motion for a more specific pleading is denied.

Defendant's paragraphs 12, 13, 14 and 15 allege:

"12. Plaintiff has failed to comply with Title I of the Consumer Credit Protection Act of 1968, 15 U.S.C. Sect. 1601 et seq., referred to here as the Truth in Lending Act, and Regulation Z promulgated thereunder by the Federal Reserve Board, in that the Judgment Note (Defendant's Exhibit A) does not itemize the component parts of the "Amount Financed" in a clear, conspicuous manner and in a meaningful sequence as required by 15 U.S.C. Sect. 1631 (a), and by Regulation Z Sects. 226.6 (a) and 226.8 (d) (1).

"13. The Judgment Note does not disclose in a clear, conspicuous manner the amount, or method of computing the amount, of any default, delinquency or similar charges payable in the event of late payments as required by 15 U.S.C. Sect. 1639 (a) (7), and by Reg. Z Sects. 226.6 (a) and 226.8 (a) (4).

"14. Pursuant to the terms of the Judgment Note (Defendant's Exhibit A), attorney's fees in the amount of 15% are automatically imposed upon default, but are not disclosed in a clear, conspicuous manner and in a meaningful sequence as part of the default, delinquency or late charges, as required by 15 U.S.C. Sect. 1639 (a) (7), and by Reg. Z Sects. 226.6 (a) and 226.8 (b) (4).

LEGAL NOTICES, cont.

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

United States of America)
vs.) Civil No. 77-54
David D. Metz, Sr. and)
Catherine L. Metz)

Public notice is hereby given, that by virtue of a Writ of Execution (Mortgage Foreclosure) issued out of the United States District Court for the Middle District of Pennsylvania, to me directed, I will expose and offer for sale at public venue to the highest bidder, terms of sale 20% down at the time of sale, balance due in thirty (30) days, on the premises of the real estate at R. D. #2, Fayetteville, Pennsylvania, in the Township of Greene, Franklin County, Pennsylvania, on February 26, 1978 at 1:00 P.M., all the right, title and interest of David D. Metz, Sr. and Catherine L. Metz, Defendant(s) and Mortgager(s), in and to the following described real estate and property, including improvements thereof.

DESCRIPTION OF PROPERTY TO BE SOLD

ALL the following described real estate, lying and being situate in Greene Township, Franklin County, Pennsylvania, bounded and limited as follows:

TRACT NO. 1: BEGINNING at an iron pin on the northwest corner of lot No. 14; thence by Tract No. 2 herein, South 86 $\frac{3}{4}$ degrees East 164 feet, more or less, to a point in Stump Run; thence South 3 $\frac{1}{2}$ degrees West 200 feet to a point on the Lincoln Highway in the middle of Stump Run Bridge; thence on Lincoln Highway, North 86 $\frac{3}{4}$ degrees West 164 feet to corner of Lot No. 13 on the hereinafter mentioned plan of lots; thence by Lot No. 13, lands of Cordelia B. Motz, North 3 $\frac{1}{2}$ degrees East, 200 feet to an iron pin; the place of beginning. Being Lots Nos. 14, 15 and 16 on a plan of lots laid out by Robert R. Ungér;

TRACT NO. 2: BEGINNING at the northwest corner of Tract No. 1; thence by land of Cordelia B. Motz, North 3 $\frac{1}{2}$ degrees East 125 feet to a point; thence by land now or formerly of Oyler, South 86 $\frac{3}{4}$ degrees East 164 feet to a point; thence by same, South 3 $\frac{1}{2}$ degrees West 125 feet to the northeast corner of Tract No. 1 herein; thence by same, North 86 $\frac{3}{4}$ degrees West 164 feet to place of beginning; containing 20,500 square feet, more or less.

Being the same real estate conveyed to the mortgagors herein by deed of Philip E. Haugh and Dorothy E. Haugh, his wife, dated March 23, 1974, and recorded in Franklin County Deed Book 333, page 89.

To all parties in interest and claimants: A Schedule of Distribution of Sale will be filed by the U. S. Marshal on March 10, 1978, with the Clerk of Court, Scranton, PA. Distribution will be made in accordance with said Schedule unless exceptions are filed thereto within ten (10) days thereafter with the Clerk.

JOHN L. BUCK
United States Marshal
Middle District of Pennsylvania
Scranton, Pennsylvania

(2-3, 2-10, 2-17)

SHERIFF'S SALES

Pursuant to Writ of Execution issued on Judgment Nos. 1975-297 & 1976-24 of the Court of Common Pleas of the Thirty-Ninth Judicial District, Franklin County Branch, I will sell at public auction sale in Court Room No. One of the Franklin County Court House, Memorial Square, Chambersburg, Pennsylvania, at One O'clock P.M. on Friday, February 24, 1978 the following real estate improved as indicated:

ALL the following described real estate, together with the improvements thereon erected, lying and being situate in Peters Township, Franklin County, Pennsylvania, bounded and limited as follows:

BEGINNING at an iron pin at lands now or formerly of Vance; thence by lands now or formerly of Vance, North 80 degrees 26 minutes East, 473.4 feet to an iron pin; thence by same, South 5 degrees 47 minutes East, 538.98 feet to a post; thence by lands now or formerly of Leab, South 3 degrees 40 minutes West, 113.37 feet to an iron pin; thence along the North side of the street, North 87 degrees 55 minutes West, 140.26 feet to a point; thence by same, South 54 degrees 50 minutes West, 310.69 feet to a point; thence by lands now or formerly of Vance and through an iron pin on line, North 35 degrees 53 minutes West, 355.52 feet to an iron pin; thence by same, North 11 degrees East, 465.01 feet to an iron pin at lands now or formerly of Vance, the place of beginning. CONTAINING 8.327 acres, more or less, as shown by draft and survey of William L. Arrowood, dated March 20, 1964, and revised April 3, 1964.

BEING THE SAME REAL ESTATE which Ronald D. Hess and Harue Hess, his wife, by Deed dated January 6, 1976, and recorded among the Deed Records of Franklin County, Pennsylvania, in Deed Book Volume 721, Page 478, conveyed to Donald D. Hess.

And having erected thereon a single family dwelling of conventional design having concrete block foundation with full basement area and cement floor. Exterior walls are of concrete or cinder block and asphalt shingle roof. Interior walls are plaster.

Seized and taken in Execution as the real estate of Ronald D. Hess, under Judgement Nos. 1975-297 and 1976-24.

TERMS: The successful bidder shall pay 20% of the purchase price immediately after the property is struck down, and shall pay the balance within ten days following the sale. If the bidder fails to do so, the real estate shall be re-sold at the next Sheriff's sale and the defaulting bidder shall be liable for any deficiency including additional costs. Any deposit made by the bidder shall be applied to the same. In addition the bidder shall pay \$20.00 for preparation, acknowledgement and recording of the deed. A Return of Sale and Proposed Schedule of Distribution shall be filed in the Sheriff's Office on March 8, 1978, and when a lien creditor's receipt is given, the same shall be read in open court at 9:30 A.M. on said date. Unless objections be filed to such return and schedule on or before March 22, 1978, distribution will be made in accord therewith.

FRANK H. BENDER, Sheriff of
Franklin County, Pennsylvania

January 27, 1978

(2-3, 2-10, 2-17)

"15. The Judgment Note (Defendant's Exhibit A) does not describe in a clear, conspicuous manner and in a meaningful sequence the components of the "Finance Charge" as required by 15 U.S.C. Sect. 1639 and by Reg. Z Sect. 226.6 (a) and 226.8 (d) (3)."

The plaintiff's motions for more specific pleading as to the above quoted paragraphs of the defendant's counterclaim are predicated on the grounds that each paragraph fails to state with specificity the manner in which the note executed by the defendants in favor of the plaintiff fails to comply with the cited sections of the Truth in Lending Act and Regulation Z.

15 U.S.C.A. 1631 (a) provides:

"Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended and upon whom a finance charge is or may be imposed, the information required under this part."

Regulation Z, Sect. 226.6 (a) provides:

"The disclosures required to be given by this part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the terminology prescribed in applicable sections. Except with respect to the requirements of Sects. 226.10, where the terms 'finance charge' and 'annual percentage rate' are required to be used, they shall be printed more conspicuously than other terminology required by this part and all numerical amounts and percentages shall be stated in figures and shall be printed in not less than the equivalent of 10 point type, .075 inch computer type, or elite size typewritten numerals, or shall be legibly handwritten."

Regulation Z, Sect. 226.8 (b) (1) provides:

"In the case of a loan or extension of credit which is not a credit sale, in addition to the items required to be disclosed under paragraph (b) of this section, the following items, as applicable shall be disclosed:

"(1) The amount of credit, excluding items set forth in paragraph (e) of this section, which will be paid to the customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of credit extended

which are not part of the finance charge, using the term 'amount financed'."

15 U.S.C.A. 1639 (a) (7) provides:

"Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit plan shall disclose each of the following items, to the extent applicable:

"(7) The default, delinquency, or similar charges payable in the event of late payments."

Regulation Z Sect. 226.8 (a) (4) is cited in the defendant's paragraph 13, but we can find no such subsection of Regulation Z.

Regulation Z Sect. 226.8 (b) (4) provides:

"In any transaction subject to this section, the following items as applicable shall be disclosed:

"(4) The amount, or method of computing the amount, of any default, delinquency, or similar charge is payable in the event of late payments."

15 U.S.C.A. Sect. 1639 provides:

"(a) Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit plan shall disclose each of the following items, to the extent applicable:

"(1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.

"(2) All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.

"(3) The total amount to be financed (the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2)).

"(4) Except in the case of a loan secured by a first lien on a dwelling and made to finance the purchase of that dwelling, the amount of the finance charge.

"(5) The finance charge expressed as an annual percentage rate except in the case of a finance charge.

"(A) which does not exceed \$5 and is applicable to an extension of consumer credit not exceeding \$75, or

"(B) which does not exceed \$7.50 and is applicable to an extension of consumer credit exceeding \$75.

"A creditor may not divide an extension of credit into two or more transactions to avoid the disclosure of an annual percentage rate pursuant to this paragraph.

"(6) The number, amount, and the due dates or periods of payments scheduled to repay the indebtedness.

"(7) The default, delinquency, or similar charges payable in the event of late payments.

"(8) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

"(b) Except as otherwise provided in this part, the disclosures required by subsection (a) of this section shall be made before the credit is extended, and may be made by disclosing the information in the note or other evidence of indebtedness to be signed by the obligor."

"(c) If a creditor receives a request for an extension of credit by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public, or in the contract of loan or other printed material delivered to the obligor, then the disclosures required under subsection (a) of this section may be made at any time not later than the date the first payment is due."

Regulation Z Sect. 226.8 (d) (3) provides:

"In the case of a loan or extension of credit which is not a credit sale, in addition to the items required to be disclosed under paragraph (b) of this section, the following items, as applicable, shall be disclosed:

“(3) Except in the case of a loan secured by a first lien or equivalent security interest on a dwelling and made to finance the purchase of that dwelling, the total amount of the finance charge, using the term ‘finance charge’, and where the total charge consists of two or more types of charges, a description of the amount of each type.”

At oral argument, counsel for the defendant was quite vehement in his assertions that the counterclaim paragraphs 12, 13, 14 and 15 were sufficiently specific, and repeatedly urged the Court to conclude that all the plaintiff and plaintiff’s counsel had to do was become familiar with the Truth in Lending Act sections cited and the Regulation Z sections and subsections cited, and they would know specifically in what areas the defendant contended the note failed to comply with the Truth in Lending Act and Regulation Z and supported her right of recovery against the plaintiff. We have set forth verbatim the various sections of the Act and the regulations cited by the defendant in her pleadings so that defense counsel will have no difficulty in observing that the sections and subsections of the Act and of the Regulation contain multiple provisions and also refer to other sections and subsections.

Pa. R.C.P. 1019 (a) provides:

“The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.”

Paragraphs 12 through 14 of the defendant’s counterclaim when expanded to include the actual language of the Truth in Lending act and Regulation Z, as cited, quite clearly do not allege material facts nor can they be said to be in a concise and summary form.

It is hornbook law in Pennsylvania that the purpose of the pleadings is to inform the opposing party not only concisely but precisely of the position taken by the pleader so that the adversary may investigate the facts alleged and prepare to meet them at trial. In the case at bar, paragraphs 12 through 15 do no such thing and are, therefore, defective under Pa. R.C.P. 1019 (a).

It should also be noted that a collateral but equally important purpose served by the fact pleading system in Pennsylvania is that it serves to inform the bench of the respective positions of the parties, and establishes a trial format within which the judge assigned to the trial of the case may properly rule upon proffered evidence. In this case, the allegations of paragraphs 12 through 15 provide no such information and would establish no such trial format.

ORDER

NOW, this 27th day of October, 1977, the plaintiff’s motion No. 1 for a more specific pleading is denied. Plaintiff’s motions 2, 3, 4 and 5 for more specific pleading are granted.

The defendant is granted twenty (20) days from this date to file an amended counterclaim, if he desires to do so.

Exceptions are granted the plaintiff and defendant, Peggie J. Fahnestock.

RIFE MOTOR COMPANY, INC. v. CHARLES EBERLY, C. P.
Franklin County Branch, No. A. D. 1977-16

Preliminary Objections - Motion for More Specific Pleading - Account Stated - Pa. R.C.P. 1019 (a) and (f)

1. The necessary elements of an account stated are: a subsisting debt arising from a pre-existing account or course of dealings between the parties; a rendition of the account by one party to the other, which is understood to be a final balance as of that date; and, an acceptance in the account presented by the party receiving it, either specifically or by failing to object within a reasonable time.
2. The pleader to specifically plead an account stated must allege an acceptance or acquiescence by the defendant of monthly billings rendered.
3. To comply with Pa. R.C.P. 1019 (a) and (f) the pleader must aver with specificity the merchandising goods and services provided to defendant by plaintiff; the dates they were provided; the charges imposed for them; and the terms and conditions of the agreement between the parties.

George F. Wright, Esq., Attorney for Plaintiff

Thomas J. Finucane, Esq., Attorney for Defendant

OPINION AND ORDER

KELLER, J., January 4, 1978:

This action in assumpsit was commenced by the filing of a complaint on December 17, 1976, and the service of a true copy of the same on the defendant on the same date. The allegations of the complaint are essentially: