"(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:

1. The purchase and receipt by the defendant of goods, merchandise and services from the plaintiff from February 9, 1965 to December 1, 1976.

2. The maintenance by plaintiff of an accurate running account of all debits and credits for the sale of merchandise and rendering of services to the defendant in its books of account.

3. That the plaintiff through its agent and the defendant entered into an oral contract whereby the defendant would purchase and plaintiff would furnish parts and services in the amounts and at prices appearing in plaintiff's books of original entry, a copy of which is attached to the complaint and marked Exhibit A.

4. That charges were made in plaintiff's books at or about the time and dates the goods and services were delivered or performed at the request of defendant.

5. That the prices charged were just and reasonable and the prices defendant agreed to.

6. That the plaintiff forwarded monthly billings to the defendant from about January 8, 1965 to December 1, 1976 requesting payment for merchandise delivered and services rendered.

7. That defendant was frequently requested to pay the outstanding balance through monthly billings and by oral requests, but has only made partial payments and he refuses to pay the balance of $45,711.81 remaining due or any part thereof.

An examination of the 75 page Exhibit A incorporated in plaintiff's complaint by attachment and reference thereto reveals that each page contains five columns captioned from left to right "Date", "Folio or Invoice No.", "Charges", "Credits" and "Balance". In the "date" column are insertions beginning 2-8-65 and concluding 12-1-76. The column marked "Folio" or "Invoice No." has four and five digit numbers presumably identifying the charge or credit document for purposes of identification and location. The "charge" and "credit" columns have numbers presumably representing the dollar values of charges and credits. The "balance" column represents a running balance of the account reflecting increases for insertions in the "charge" column and decreases in the "credit" column. The balance as of December 1, 1976 is $45,711.81, which is the sum the plaintiff sues for with interest from December 1, 1976.

On June 16, 1977, the defendant filed preliminary objections in the nature of a motion for a more specific pleading as to paragraphs Nos. 3, 5, 6, 7 and 9 of plaintiff's complaint. The thrust of defendant's preliminary objections is that the plaintiff has failed to specify the merchandise, goods and services furnished, failed to state the date of the oral agreement, together with the terms and conditions thereof, failed to state the dates of delivery of goods or the furnishing of services, failed to state the facts as to when and where defendant's requests were made, failed to state the prices charged and when the defendant agreed to pay; and failed to show how plaintiff determined his total claim. Arguments were heard on December 1, 1977, and the matter is ripe for disposition.

The plaintiff contends its action in assumpsit is on an account stated. The defendant concedes that his preliminary objections should be dismissed if the suit is as a matter of law on an account stated, but he argues that the language of the complaint is a suit on an open account as distinguished from an account stated. Therefore, the defendant urges the Rules of Civil Procedure requiring specificity apply to plaintiff's complaint, and he is entitled to have his motions for a more specific pleading granted.

To resolve the question of law raised by the parties, it first becomes necessary to determine what an action on an account states is.

1 P.L.E. Accounts Sect. 3 states inter alia:

"An account stated must be based on a subsisting debt, and, it is said, must arise from a pre-existing account or course of dealings between the parties. . . .

"Rendition, the initial step in the stating of an account, may be performed either by the creditor or the debtor.

"An account stated must be understood as a final adjustment of demands and the amount due, but it need not itemize all the charges and credits. . . .

1 P.L.E. Accounts Sect. 4 states inter alia:

"To produce an account stated, the account must be rendered and the other party must accept, agree to or acquiesce in the correctness of the account under such circumstances as to import a promise of payment on the one side and an acceptance on the other. In short, there must be a meeting of

the minds, and there can be no account stated where the account rendered meets with general objection.

"Acceptance or acquiescence need not be manifested expressly, but may be implied from the circumstances. Where the debtor has had an opportunity to scrutinize the account, his silence is prima facie evidence of acquiescence in an account stated, but the rule is otherwise if the debtor makes a timely objection. . . .

". . .The more recent cases adhere to the rule that a party's retention of an account rendered for an unreasonably long time without objection is at least some evidence, and, according to *Montgomery v. Van Ronk* and *Mahoney v. Boenning*, conclusive evidence, of acquiescence."

1 P.L.E. Accounts, Sect. 5 states inter alia:

"It has been said that an account stated is prima facie evidence of its correctness in the absence of a showing of fraud, mistake or error, but it is more generally stated that, absent impeaching evidence, such as a showing of fraud, mistake, omission or inaccuracy, an account stated is conclusive upon the parties. . . ."

1 P.L.E. Accounts, Sect. 7 states inter alia:

"Assumpsit is the proper remedy to enforce payment of the balance shown by an account stated, . . . A party relying on an account stated need not plead the nature of the original transaction or indebtedness, or set forth the items entering into the account. . ."

"A written acknowledgement of an account rendered or failure to make objection, constitutes prima facie evidence of acquiescence, and it has been held that the question of acquiescence is one for the jury, to be submitted where there is any evidence, however slight, of assent, although where the evidence concerning the statement of the account is not in dispute, the question whether an account has been stated is one for the court."

Sect. 422 of the Restatement of the Law, Contracts, provides inter alia:

"(1) Matured debts are discharged by a manifestation of assent in good faith by debtor and creditor to a stated sum as an accurate computation of the amount of the matured debt or debts due the creditor, or if there are cross demands as the

amount of the difference between the total indebtedness due one party and the total indebtedness due the other party. A new duty arises to pay a sum so fixed.

"(2) Retention without objection by one party for an unreasonably long time is a manifestation of assent within the rule stated within Subsection (1)."

(Cited with approval in *David v. Veitscher Magnesitwerke Actien Gesellschaft*, 348 Pa. 335, 341 (1944).)

2 S.P.P. 127 states inter alia:

"An account stated is defined to be 'an account in writing, examined and accepted by both parties.' The true rule appears to be that an account rendered, with a balance struck, and assented to by the party to whom it is rendered, is an account stated. Such acceptance need not be express, but may be implied from the circumstances. So, a sales account rendered may become an account stated by the consent of the consignors to whom it is sent. Such assent need not be expressed in words; it may be implied from the conduct of the party. It is the rule that long acquiescence in the account would raise a presumption of acceptance which would be conclusive. The time within which objection must be made cannot be definitely fixed. It depends upon the circumstances of the case whether an acquiescence or a presumed agreement to the correctness of the account exists. If it does, and the party does not account for his silence, the account is considered as settled to his satisfaction. The reason for this rule is the same as for that which requires immediate notice to be given to the parties to a bill or note of its dishonor, and other rules of a similar character.

"The silence of the party, continued unnecessarily long, is a legal presumption of his assent, and his assent may be presumed from his acts as well as his silence; if he acknowledges the receipt of the account, communicates with the other party on the subject of the mode of remitting the balance, and receives that remittance without any objection, his conduct is in law an asset to the account. If he signs the account, or says to his correspondent, 'I have examined it and found it correct,' it will be a stated account."

"An account stated is an independent contract which arises from the rendition of an account and the failure of the debtor for a reasonable time to object thereto." 2 S.P.P. 164.

"If an account is rendered to the defendant and no

objection thereto is made by him, his acquiescence being shown by his promise to pay it, the account becomes an account stated, and the statement thereon is sufficient even though details of book account are not set forth. It is sufficient to set forth the facts that the account was stated between the parties, that a certain sum was found due one to the other, and that the sum is yet unpaid; it is not necessary to set forth the subject matter of the original debt or to allege a promise to pay." 3 S.P.P. 234.

In *South Side Trust Co. v. Washington Tin Plate Co.*, 252 Pa. 237, 242 (1916), the Supreme Court of Pennsylvania held:

> "This action was brought upon an account stated, the gist of which consists in an agreement to, or, acquiescence in, the correctness of the account, so that in proving the account stated, it is not necessary to show the nature of the original transaction, or indebtedness, or to set forth the items entering into the account. Where the evidence tending to show the statement of account is not in dispute, the question as to whether the transaction amounts to an account stated, is for the determination of the court."

"In *Leinbach v. Walle*, 211 Pa. 629, 630 (1905), the court there defined an account stated to be an account in writing, examined and accepted by both parties, which acceptance need not be expressly so, but may be implied from the circumstances. If, as plaintiff contends, this was an account stated, there must be evidence of an acceptance, at least from the circumstances, by the defendant..." *Robbins v. Weinstein*, 143 Pa. Super. 307, 316 (1940).

From the foregoing, we can conclude that the necessary elements of an account stated are:

1. A subsisting debt arising from a pre-existing account or course of dealings between the parties.

2. A rendition or presentation of the account by one party to the other, which is understood to be a final balance due as of that date.

3. An acceptance or acquiescence in the account presented by the party receiving it; either by way of specific approval of or agreement with the account or by failure to object within a reasonable time.

If the elements of the account stated are established, then

a new and separate contract arises between the parties. Upon failure of the debtor to pay the balance agreed upon the creditor may sue on the new contract as an account stated.

It is the plaintifff's position that it has pleaded the necessary elements of an account stated and, consequently, it is not required to plead the original transactions with the defendant, the merchandise purchased and services rendered with dates and charges, and the other matters sought by the preliminary objections. *McKinney, et al v. Earl L. Cump, Inc.* 4 Adams Co. L.J. 131 (1961); *Weiner et al v. Gable*, 69 York Leg. R. 119 (1955).

Applying the law on accounts stated to the facts alleged in the plaintiff's complaint, it becomes immediately apparent that the plaintiff has failed to allege an acceptance or acquiescence in any one or more or all of the monthly billings the plaintiff alleges it forwarded to the defendant. Absent the pleading of this essential element, we must conclude that the plaintiff has not pleaded an account stated. Therefore, the plaintiff must be considered as suing on an open account and must comply with the Rules of Civil Procedure.

We do not find paragraphs Nos. 3, 5, and 7 of the plaintiff's complaint comply with Pa. R.C.P. 1019(a) and (f) in that they fail to allege with the necessary specificity:

(a) The merchandise, goods and services provided defendant by plaintiff.

(b) The dates they were provided.

(c) The charges imposed for them.

(d) The terms and conditions of the agreement between the parties.

In our judgment paragraphs 6 and 9 are sufficiently specific.

ORDER

NOW, this 4th day of January, 1978, defendant's preliminary objections Nos. 1, 2, 3 and 6, are sustained; Nos. 4, 5 and 7, are overruled. The plaintiff is granted leave to amend its complaint consistent with this Opinion within twenty (20) days. [*Ryon V. Andershonis*, 42 D&C 2d 86 (1967), *C-E Glass v. Ryan*, 70 D&C 2d 251 (1975).]