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Franklin County Legal Journal

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**PORTFOLIO RECOVERY ASSOCIATES, LLC, Plaintiff v.
ANDREW R. FOLTZ, Defendant**

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Civil Action No. 2020 - 3199

HOLDING: The Defendant's preliminary objection asserting the Plaintiff failed to attach documentation of the assignment of the debt is sustained; however, the balance of the objection as to whether the Plaintiff attached sufficient documentation pursuant to Pa.R.C.P. No. 1019(i) is overruled. The Defendant's preliminary objection asserting the Plaintiff failed to allege dates and amounts concerning the debt, in violation of Pa.R.C.P. No. 1019(i), is sustained.

HEADNOTES

Standard of Review of Preliminary Objections

1. When ruling upon preliminary objections, the Court must accept as true all well-pleaded allegations of material fact as well as all reasonable inferences deducible therefrom. The Court is not required to accept as true any conclusions of law or expressions of opinion. In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by refusal to sustain them. *Allegheny Sportsmen's League v. Ridge*, 790 A.2d 350, 354 (Pa. Cmwlth. 2002).

Defenses – Creditor's failure to attach sufficient documentation

2. A creditor's failure to produce a cardholder agreement, statement of account, and assignment of the account establishes a meritorious defense in a credit card debt collection case. *Commonwealth Financial Systems, Inc. v. Smith*, 15 A.3d 492, 501 (Pa. Super. 2011); *Atlantic Credit and Finance, Inc. v. Giuliana*, 829 A.2d 340, 345 (Pa. Super. 2003).

Pleading – Proper grounds for preliminary objections in a credit card debt case

3. Under Pa.R.C.P. No. 1019(i), it is proper for a defendant in a credit card debt case to raise a preliminary objection that a plaintiff did not produce a cardholder agreement and statement of account. *Discover Bank v. Stucka*, 33 A.3d 82, 87 (Pa. Super. 2011).

Appearances:

Robert N. Polas, Jr., Esq. *for Plaintiff*

Andrew R. Foltz, *pro se*

OPINION

Before Zook, J.

The above captioned matter is before the Court on Defendant's *Preliminary Objections (PO)*, filed November 30, 2020.

I. FACTUAL AND PROCEDURAL HISTORY

Plaintiff filed its *Complaint* on October 29, 2020. In the *Complaint*, Plaintiff asserts Defendant had a credit account with U.S. Bank National Association (“U.S. Bank”), that Defendant used the account for purchases, that Defendant’s last valid payment on the account was December 7, 2018, that the account has an outstanding balance of \$5,636.99, and that Plaintiff now holds the account.¹ *See Complaint*, ¶¶ 3-5, 7-9.

Defendant filed the *PO* and his *Brief in Support of Preliminary Objections (Defendant’s Brief)* on November 30, 2020. Plaintiff filed its *Brief in Opposition to Defendant’s Preliminary Objections (Plaintiff’s Brief)* on December 22, 2020. By *Order* dated January 5, 2021, the Court deemed the *PO* submitted for decision without oral argument.² The Court having considered the parties’ briefs, the record, and the law, this matter is ready for decision.

II. THE OBJECTIONS

Defendant raises two preliminary objections. First, Defendant asserts the *Complaint* fails to comply with Pa.R.C.P. Nos. 1028(a)(2), 1028(a)(3), and/or 1028(a)(4). *See PO*, ¶ 2. Defendant asserts Plaintiff violated Pa.R.C.P. No. 1019(i) by failing to attach to the *Complaint* Defendant’s credit agreement with U.S. Bank, the assignment of the account to Plaintiff, and the “charges, credits, fees or other amounts” comprising Defendant’s alleged debts. *See PO*, ¶ 2.

Second, Defendant asserts the *Complaint* fails to comply with Pa.R.C.P. Nos. 1028(a)(2), 1028(a)(3), and/or 1028(a)(4). *See PO*, ¶ 3. Defendant points to Pa.R.C.P. No. 1019(a), which requires “[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form.” *See PO*, ¶ 3. Defendant also cites to Pa.R.C.P. No. 1019(f), requiring “[a]verments of time, place and items of special damage shall be specifically stated.” *See PO*, ¶ 3. Defendant objects that Plaintiff violated Pa.R.C.P. Nos. 1019(a) and 1019(f) by failing to allege “the date of all charges, credits, fees or other amounts concerning the Debt, the date of Account opening, last Account payment, last Account charge, or Account charge-off, or the amount of or purpose for all charges, credits, fees or other amounts concerning the Debt.” *See PO*, ¶ 3.

III. ANALYSIS

 [W]hen ruling upon preliminary objections, the Court must

¹ Plaintiff averred it is the “purchaser, assignee, and/or successor in interest to U.S. Bank.” *Complaint*, ¶ 8.

² *See* Pa.R.C.P. No. 211.

accept as true all well-pleaded allegations of material fact as well as all reasonable inferences deducible therefrom. The Court is not required to accept as true any conclusions of law or expressions of opinion. In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and any doubt should be resolved by refusal to sustain them.

Allegheny Sportsmen's League v. Ridge, 790 A.2d 350, 354 (Pa. Cmwlth. 2002) (internal citations omitted).

Pa.R.C.P. No. 1028(a) provides the grounds upon which parties may file preliminary objections. According to Pa.R.C.P. No. 1028(a)(2), a party may file a preliminary objection to a pleading based on the “failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter.” Pa.R.C.P. No. 1028(a)(3) provides a party may file a preliminary objection based on “insufficient specificity in a pleading.” Pa.R.C.P. No. 1028(a)(4) permits a party to file a preliminary objection seeking a demurrer.

A. Whether Plaintiff Attached Sufficient Documentation

Defendant asserts the *Complaint* does not conform to Pa.R.C.P. No. 1019(i), and is thereby objectionable under Pa.R.C.P. Nos. 1028(a)(2), 1028(a)(3), and/or 1028(a)(4). *See PO*, ¶ 2. Defendant cites to Pa.R.C.P. No. 1019(i), asserting Plaintiff did not attach required documents to the *Complaint*. *See PO*, ¶ 2. According to Pa.R.C.P. No. 1019(i), “[w]hen any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof,” but if the writing is unavailable to the pleader, “it is sufficient so to state, together with the reason, and to set forth the substance in writing.” Defendant asserts Plaintiff failed to attach to the *Complaint* Defendant’s alleged credit agreement, assignment of the account to Plaintiff, and amounts of Defendant’s alleged debts. *See PO*, ¶ 2. Because Defendant’s objection centers on the failure to attach required documents, the objection is substantively under Pa.R.C.P. Nos. 1028(a)(2) and 1019(i) alone.

A creditor’s failure to produce a cardholder agreement, statement of account, and assignment of the account establishes a meritorious defense in a credit card debt collection case. *See Commonwealth Financial Systems, Inc. v. Smith*, 15 A.3d 492, 501 (Pa. Super. 2011) and *Atlantic Credit and Finance, Inc. v. Giuliana*, 829 A.2d 340, 345 (Pa. Super. 2003). Plaintiff attached the credit card agreement between Defendant and U.S. Bank to the *Complaint*. Plaintiff also attached a credit card statement.

Plaintiff attached documentation purportedly establishing the

assignment of Defendant's account and debt with U.S. Bank to Plaintiff. Pa.R.C.P. No. 2002(a) provides "all actions shall be prosecuted by and in the name of the real party in interest." An assignee may sue in its own name without joining the assignor as a party if the assignee's pleading traces the derivation of its cause of action from the assignor. *See Brown v. Esposito*, 42 A.2d 93 (Pa. Super. 1945). However, the assignee must affirmatively assert the derivation of the title, and the debtor may demand proof of the assignment. *Id.* at 94. In the present case, Plaintiff asserts it is the assignee and present holder of Defendant's debt/account. *See Complaint*, ¶ 8. Plaintiff supported this assertion by attaching a Bill of Sale to the *Complaint*. Though the Bill of Sale is signed and dated, it is only a single page that references a lot number; nothing on the Bill of Sale is attributable to Defendant's account. This is insufficient to establish Plaintiff's right to sue or collect in the place of U.S. Bank against Defendant.

At this procedural point, the credit agreement and statement attached by Plaintiff are sufficient to show Defendant's credit agreement with U.S. Bank. However, the documents attached by Plaintiff are insufficient to establish Plaintiff's right to sue in the place of U.S. Bank's.

B. Whether Plaintiff Sufficiently Pled its Cause of Action

Defendant asserts the *Complaint* does not conform to Pa.R.C.P. Nos. 1019(a) and 1019(f) and is therefore objectionable under Pa.R.C.P. Nos. 1028(a)(2), 1028(a)(3), and/or 1028(a)(4). *See PO*, ¶ 3. According to Pa.R.C.P. No. 1019(a), "[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form." According to Pa.R.C.P. No. 1019(f), "[a]verments of time, place and items of special damage shall be specifically stated."

Defendant asserts Plaintiff violated Pa.R.C.P. Nos. 1019(a) and 1019(f) by failing to allege the date of charges, account opening, last payment, last charge or charge-off, or the amount or purpose of all charges. *See PO*, ¶ 3. Defendant also cites Pennsylvania's fact pleading standard. *See Defendant's Brief*, un-paginated 3, citing *Bricklayers of Western Pennsylvania Combined Funds, Inc. v. Scott's Development Co.*, 90 A.3d 682, 694 n.14 (Pa. 2014). Defendant's objection is substantively a general challenge to the sufficiency of the pleadings under Rule 1028(a)(3) and Rule 1019(i) and will be treated as such.

Under Rule 1019(i), it is proper for a defendant in a credit card debt case to raise a preliminary objection that a plaintiff did not produce a cardholder agreement and statement of account. *See Discover Bank v. Stucka*, 33 A.2d 82, 87 (Pa. Super. 2011). Plaintiff alleges it attached an

“account history” containing the information Defendant objects as missing or insufficiently pled. *See Plaintiff’s Brief*, un-paginated 3-4. However, the exhibits attached to the *Complaint* do not contain an “account history” or any information on the account’s opening date, charge-off date, charge-off amount, account number,³ or date of last payment. Though Plaintiff asserts this type of information is unnecessary to be pled in the *Complaint*, Plaintiff cites no appellate decisions in support. *See Plaintiff’s Brief*, un-paginated 2-3. As there is no appellate authority holding this type of information is unnecessary at this stage, we find Pa.R.C.P. No. 1019(i) is not satisfied. Defendant’s objection will be sustained.

IV. CONCLUSION

Defendant’s first objection is substantively only under Pa.R.C.P. No. 1028(a)(2) and Pa.R.C.P. No. 1019(i). Though the objection as to failure to attach documentation of the assignment of the debt from U.S. Bank to Plaintiff will be sustained, the balance of the first preliminary objection will be overruled. Defendant’s second objection will be sustained, as Plaintiff did not sufficiently plead its cause of action or attach sufficient documentation to supplement the averments of fact.

An appropriate order follows.

³ The Plaintiff redacted the account number, even in the documents under seal by virtue of the *Confidential Document Form*. *See Complaint*, Exhibits.

ORDER

AND NOW, this 11th day of February, 2021, on the forgoing *Opinion*, **IT IS HEREBY ORDERED**:

1. As to the Defendant's preliminary objection related to whether the Plaintiff attached required documents to the *Complaint*:
 - a. The preliminary objection related to the Plaintiff's failure to attach documentation of the assignment of the debt is **SUSTAINED**;
 - b. The balance of this preliminary objection is **OVERRULED**;
2. The Defendant's preliminary objection related to the Plaintiff's failure to allege dates and amounts concerning the account is **SUSTAINED**;
3. The Plaintiff is granted twenty (20) days to file an *Amended Complaint*.

Notice of this judgment shall be given pursuant to Pa.R.C.P. No.

236.