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Franklin County Legal Journal

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CITIBANK N.A., Plaintiff v. CHARLES JONES, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Civil Action No. 2020-3129

HOLDING: The Defendant’s preliminary objection asserting the Plaintiff failed to specify whether the alleged agreement between the parties was oral or written is sustained. The Defendant’s preliminary objection asserting the Plaintiff’s failed to attach a copy of the agreement is also sustained. However, the Defendant’s preliminary objection related to the Plaintiff’s use of an account stated theory is overruled.

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).

Account Stated – Definition

2. An account stated theory requires “an account in writing, examined and accepted by both parties.” *Robbins v. Weinstein*, 17 A.2d 629, 634 (Pa. Super. 1941).

Account Stated – Credit Card Debt

3. Trial courts are split on whether an account stated theory is a proper claim upon which to collect a credit card debt. *See, e.g., Capital One Bank (USA) NA v. Clevenstine*, 7 Pa. D. & C. 5th 153, 157 (Centre County 2009), and *Citibank (South Dakota) N.A., Bank v. Ananiev*, 13 Pa. D. & C. 5th 557, 559 (Monroe County 2010).

Appearances:

Robert Kline, Esq. and Russell Axelrod, Esq. *for Plaintiff*

Erik M. Helbing, Esq. *for Defendant*

OPINION

Before Zook, J.

The above captioned matter is before the Court on the *Preliminary Objections to the Plaintiff’s Complaint (PO)*, filed by Defendant on November 2, 2020.

I. FACTUAL AND PROCEDURAL HISTORY

Plaintiff filed a *Complaint* on October 21, 2020. In the *Complaint*, Plaintiff asserts Defendant had a credit card account with Plaintiff, that Defendant used the account for purchases, that Defendant's last valid payment on the account was received around March 29, 2019, and that Defendant's account had an outstanding balance of \$3,174.72. *See Complaint*, ¶¶ 2-4, 6-7.

Defendant filed the *PO* and *Brief in Support of the Defendant's Preliminary Objections* to the Plaintiff's *Complaint* on November 2, 2020. Defendant also filed a *Praecipe to List for Argument* on November 2, 2020. However, Plaintiff did not respond to the *PO* or file a brief in support of its position.

By *Order* dated December 14, 2020, the Court directed oral argument to be conducted via advanced communication technology, and further directed counsel to verify their electronic mail address with the Court. Counsel for Defendant timely complied; counsel for Plaintiff did not.

Due to Plaintiff's failure to comply, the Court struck oral argument and deemed the *PO* submitted for decision.¹ *See Order*, January 4, 2021. On January 25, 2021, Plaintiff filed an *Amended Complaint*; the *Amended Complaint* is facially untimely and filed without leave of the Court. This matter is ready for decision.

II. THE OBJECTIONS

Defendant raises three preliminary objections. First, Defendant objects the *Complaint* fails to comply with Pa.R.C.P. No. 1028(a)(2). *See PO*, ¶¶ 3-11. Defendant cites Pa.R.C.P. No. 1019(h), which provides "[w]hen any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written." *See PO*, ¶ 5. Defendant asserts an agreement between Plaintiff and Defendant must exist, as it would be impossible for Plaintiff to prevail in the instant action without an oral or written agreement. *See PO*, ¶¶ 6-7. Defendant asserts the Plaintiff did not plead whether the agreement was oral or written, in violation of Rule 1019(h). *See PO*, ¶¶ 8-9.

Second, Defendant objects that the *Complaint* fails to comply with Pa.R.C.P. No. 1019(i).² *See PO*, ¶¶ 12-19. Defendant asserts Plaintiff violated Pa.R.C.P. No. 1019(i) by failing to attach a copy of the written agreement to the *Complaint* or averring a copy of the agreement was unavailable. *See*

¹ *See* Pa.R.C.P. No. 211.

² *See* Pa.R.C.P. No. 1028(a)(2).

PO, ¶¶ 14- 18. Defendant brings this objection to the extent Plaintiff’s claim is based upon a written agreement. *See PO*, ¶ 13.

Third, Defendant objects the *Complaint* fails to comply with Pa.R.C.P. No. 1028(a)(4). *See PO*, ¶¶ 20-23. Pa.R.C.P. 1028(a)(4) provides a party may file a preliminary objection based on “legal insufficiency of a pleading (demurrer).” Defendant brings this objection to the extent Plaintiff is asserting a claim based on an “account stated” theory. *See PO*, ¶ 21. Defendant argues it is legally improper for Plaintiff to pursue an account stated theory when attempting to collect a credit card debt because Defendant cannot “intelligently assent” to the accuracy of amounts in credit card statements. *See PO*, ¶ 22.

III. ANALYSIS

[W]hen 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) (internal citations omitted).

A. Whether Plaintiff Specified if the Agreement was Written or Oral

Pa.R.C.P. No. 1028(a) provides the grounds upon which parties may file preliminary objections. According to Rule 1028(a)(2), a party may file preliminary objections 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.”

Defendant asserts the *Complaint* does not conform to Pa.R.C.P. No. 1019(h) and thereby is objectionable under Pa.R.C.P. No. 1028(a)(2). *See PO*, ¶¶ 3-11. According to Defendant, for Plaintiff to prevail an agreement must exist between Plaintiff and Defendant, and it must be either written or oral.

Pa.R.C.P. No. 1019(h) states, in relevant part, “[w]hen any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written.” Plaintiff asserts its claim as a result of an alleged breach of an agreement. *See Complaint*, ¶ 3. Therefore, Plaintiff must specifically plead whether the alleged agreement was oral or

written. Here, Plaintiff failed to do so. *See Complaint*, ¶¶ 1-8. Therefore, the *Complaint* does not conform to a rule of court, namely Pa.R.C.P. No. 1019(h). Defendant’s preliminary objection under Pa.R.C.P. No. 1028(a) will be sustained.

B. Whether Plaintiff Attached a Copy of the Written Agreement

Defendant asserts the *Complaint* does not conform to Pa.R.C.P. No. 1019(i) and is thereby objectionable under Pa.R.C.P. No. 1028(a)(2). *See PO*, ¶¶ 12-19. Defendant brings this objection to the extent Plaintiff’s claim is based on a written agreement. *See PO*, ¶ 13.

Pursuant 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.” If Plaintiff’s claims are sourced from a written agreement, Plaintiff did not attach a copy of the written agreement between Plaintiff and Defendant; further, Plaintiff did not explain why a copy was not attached. *See Complaint*, ¶¶ 1-8. Therefore, Pa.R.C.P. No. 1019(i) is not satisfied; the *Complaint* is objectionable under Pa.R.C.P. No. 1028(a)(2). Defendant’s objection will be sustained.

C. Demurrer

Pa.R.C.P. No. Rule 1028(a)(4) permits a party to file a preliminary objection seeking a demurrer. Defendant brings his objection to the extent Plaintiff’s claim is based on an “account stated” theory.³ *See PO*, ¶ 21. Defendant argues it is legally improper to pursue an account stated theory in an action to collect a credit card debt because Defendant cannot verify the accuracy of information contained in credit card statements. *See PO*, ¶ 22.

Trial courts are split on whether an account stated theory is a proper claim upon which to collect a credit card debt. *See, e.g., Capital One Bank (USA) NA v. Clevestine*, 7 Pa. D. & C. 5th 153, 157 (Centre County 2009) (holding “[a]n account stated theory is not appropriate in a credit card account case”), and *Citibank (South Dakota) N.A., Bank v. Ananiev*, 13 Pa. D. & C. 5th 557, 559 (Monroe County 2010) (holding “an action can be based on the theory accounts stated” at the preliminary stages in a credit card debt case). Defendant cites to trial court cases for the elements of an account stated theory. *See Rush’s Service Center Inc. v. Genareo*, 10 Pa. D.

³ An account stated theory requires “an account in writing, examined and accepted by both parties.” *Robbins v. Weinstein*, 17 A.2d 629, 634 (Pa. Super. 1941).

& C. 4th 445, 447 (Lawrence County 1991). However, Defendant did not object that Plaintiff insufficiently pled an account stated theory, only that this theory is not permitted in credit card cases as a matter of law. *See PO*, ¶¶ 21-22. In the absence of appellate authority holding credit card debt cases cannot be pursued under an account stated theory, this Court is inclined to overrule the objection at this early stage.

IV. CONCLUSION

Plaintiff failed to specify whether the agreement between Plaintiff and Defendant was oral or written. Defendant's first objection will be sustained. If written, Plaintiff did not attach a copy of the agreement to the *Complaint*. Defendant's second objection will be sustained. In the absence of appellate authority holding that a credit card debt case cannot be sustained on an account stated theory, Defendant's third objection will be overruled.

An appropriate order follows.

ORDER

AND NOW, this 10th day of February, 2021, based on the forgoing *Opinion*, **IT IS HEREBY ORDERED**:

1. The Defendant's preliminary objection related to the Plaintiff's failure to specify whether the alleged agreement between the parties was oral or written is **SUSTAINED**;
2. The Defendant's preliminary objection related to the Plaintiff's failure to attach a copy of the agreement to the *Complaint* is **SUSTAINED**;
3. The Defendant's preliminary objection related to an account stated theory as a basis for Plaintiff's action is **OVERRULED**;
4. 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.