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### **Franklin County Legal Journal**

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**PORTFOLIO RECOVERY ASSOCIATES, LLC, Plaintiff v.  
DANA N. DAGUE, Defendant**

Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch, Civil Action No. 2020-3133

**HOLDING:** The Defendant’s preliminary objection asserting the Plaintiff failed to attach sufficient documentation of the assignment of the Defendant’s account, the Defendant’s cardholder agreement, and the Defendant’s statement of account is sustained. The Defendant’s preliminary objection asserting the Plaintiff failed to plead its cause(s) of action with specificity is sustained. The Defendant’s preliminary objection seeking a demurrer based on the Plaintiff’s failure to specify the cause(s) of action it is pursuing 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).

*Pleading – Defenses in a Credit Card Debt Case*

2. A creditor’s failure to produce an assignment of account, cardholder agreement, and statement of 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. Giuliani*, 829 A.2d 340, 345 (Pa. Super. 2003).

*Assignment – Joinder*

3. 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. *Brown v. Esposito*, 42 A.2d 93 (Pa. Super. 1945).

*Pleading – Exhibits in a Credit Card Debt Case*

4. A plaintiff does not need to produce a signed cardholder agreement if the plaintiff instead attaches a copy of an agreement and alleges it is the actual agreement between the parties. *Discover Bank v. Stucka*, 33 A.3d 82, 87 (Pa. Super. 2011).

5. A single account statement is insufficient to permit recovery. *Atlantic Credit and Finance, Inc. v. Giuliani*, 829 A.2d 340, 345 (Pa. Super. 2003).

6. Seven years’ worth of account statements is sufficient to permit recovery. *Discover Bank v. Stucka*, 33 A.3d 82, 87 (Pa. Super. 2011).

*Pleading – Complaint*

7. A complaint must “inform[] the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense.” *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa. Super. 2006).

Appearances:

Michael A. Carrucoli, Esquire *for Plaintiff*

Michael B. Volk, Esquire *for Plaintiff*

Vincent G. Trott, Esquire *for Defendant*

**OPINION**

Before Zook, J.

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

**I. FACTUAL AND PROCEDURAL HISTORY**

Plaintiff filed its *Notice of Appeal from Magisterial District Judge Judgment* on October 21, 2020. Plaintiff filed its *Complaint* on October 28, 2020. In the *Complaint*, Plaintiff asserts Defendant had a credit agreement with Cit Online Bank, Defendant used the account for purchases, Defendant’s last payment on the account was April 14, 2017, the account has an outstanding balance of \$1,680.31, and Plaintiff now holds the account. *See Complaint*, ¶¶ 1, 3-4, 6-7.

Defendant filed the *PO* on November 30, 2020. Plaintiff filed its *Response to Defendant’s Preliminary Objections* and its *Brief in Support of its Response to Defendant’s Preliminary Objections* on December 10, 2020. Defendant filed its *Brief in Support of Preliminary Objections to Complaint* on February 2, 2021. Oral argument was held on February 11, 2021. This matter is ready for decision.

**II. THE OBJECTIONS**

Defendant raises three preliminary objections. First, Defendant objects to the *Complaint* based on Pa.R.C.P. No. 1028(a)(2). Defendant cites Pa.R.C.P. 1019(i), which provides “[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 raises this objection on multiple fronts. First, Defendant asserts

Plaintiff did not attach proof of the assignment of Defendant’s account from the original creditor to Plaintiff. *See PO*, ¶¶ 3-4. Second, Defendant asserts Plaintiff did not attach a copy of the terms and conditions of Defendant’s account. *See PO*, ¶¶ 7-10. Third, Defendant asserts Plaintiff did not attach a statement of account. *See PO*, ¶¶ 12-13. Additionally, Defendant asserts Plaintiff failed to explain the absence of any of these documents. *See PO*, ¶¶ 5, 11, 15.

Second, Defendant objects to the *Complaint* based on Pa.R.C.P. No. 1028(a)(3). Defendant asserts the *Complaint* is insufficiently specific because none of the documents specified in Defendant’s first preliminary objection are attached. *See PO*, ¶¶ 17-18.

Third, Defendant objects to the *Complaint* based on Pa.R.C.P. No. 1028(a)(4). Defendant seeks a demurrer and asserts the *Complaint* does not set forth a viable cause of action. *See PO*, ¶ 28.

### 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 Attached Sufficient Documentation*

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.” Defendant raises this objection pursuant to Pa.R.C.P. No. 1019(i). 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 several documents to the *Complaint*: the assignment of Defendant’s account to Plaintiff, Defendant’s cardholder agreement, and a statement of account.

See *PO*, ¶¶ 3-13.

A creditor's failure to produce an assignment of account, cardholder agreement, and statement of 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). Here, Plaintiff has failed to produce sufficient documentation on all three fronts.

Defendant asserts Plaintiff failed to produce a copy of the assignment of Defendant's account. 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. Here, the *Complaint* contains an unsigned cardholder agreement. See *Complaint, Exhibit A*. However, there is nothing in the agreement linking it to Defendant, such as a name, account number, or date. There is also nothing in the agreement linking it to Plaintiff. This is insufficient to establish an assignment ever occurred.

Defendant asserts Plaintiff failed to produce a copy of Defendant's cardholder agreement. A plaintiff does not need to produce a signed cardholder agreement if the plaintiff instead attaches a copy of an agreement and alleges it is the actual agreement between the parties. See *Discover Bank v. Stucka*, 33 A.3d 82, 87 (Pa. Super. 2011). Therefore, Plaintiff must either (1) attach a signed agreement or (2) plead the unsigned agreement as attached was the agreement between the parties and Defendant accepted the agreement's terms. Here, Plaintiff has not pled why it could not produce the signed agreement. Plaintiff averred Exhibit A of the *Complaint* is either the actual agreement applicable to Defendant's account or an example of such an agreement typically issued by the original lender. See *Complaint*, ¶ 8. These facts are insufficient to establish the attached agreement was Defendant's agreement with Cit Online Bank.

Defendant asserts the two monthly statements Plaintiff attached to the *Complaint* are insufficient as a statement of account. Neither the Superior Court nor the Supreme Court has specified how many account statements are sufficient to create a statement of account. The Superior Court has found a single account statement is insufficient to permit recovery but seven years' worth of account statements is sufficient. See *Atlantic Credit and Finance, Inc. v. Giuliana*, 829 A.2d 340, 345 (Pa. Super. 2003), and *Discover Bank v. Stucka*, 33 A.3d 82, 87 (Pa. Super. 2011). Here, the *Complaint* contains only two account statements, both of which contain Defendant's name but a redacted account number. Based on the Superior Court's guidance in

the above-cited cases, we are inclined to find the two account statements attached by Plaintiff were not sufficient to put Defendant on notice of the amount due. Plaintiff did not attach a sufficient statement of account. Defendant's preliminary objection pursuant to Pa.R.C.P. No. 1028(a)(2) will be sustained.

*B. Whether Plaintiff Pled its Cause of Action with Specificity*

According to Pa.R.C.P. No. 1028(a)(3), a party may file a preliminary objection based on "insufficient specificity in a pleading." A complaint must "inform[] the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense." *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa. Super. 2006). Defendant objects Plaintiff's failure to attach a cardholder agreement and statement of account renders Defendant unable to prepare a defense. *See PO*, ¶¶ 17-26.

As previously explained, Plaintiff did not attach the relevant agreement or statement of account nor explained their absence. Without a copy of the agreement, Defendant is unable to identify what terms and conditions are alleged to apply. Defendant cannot prepare a defense without this information. Based on the case law cited *supra*, merely two monthly statements are insufficient to put Defendant on notice of the amount due. *See Atlantic Credit and Finance, Inc.*, 829 A.2d 340, 345 (Pa. Super. 2003), and *Discover Bank*, 33 A.3d 82, 87 (Pa. Super. 2011). Though case law does not state Plaintiff must plead every transaction or supplement its pleadings by attaching all of Defendant's monthly statements, Plaintiff has not attached sufficient account statements and/or an aggregate account summary for Defendant to prepare a defense. Defendant's preliminary objection pursuant to Pa.R.C.P. No. 1028(a)(3) will be sustained.

*C. Demurrer*

According to Pa.R.C.P. No. 1028(a)(4), a party may file a preliminary objection seeking a demurrer. Defendant objects the *Complaint* does not set forth a viable cause of action, such as breach of contract, unjust enrichment, or account stated. *See PO*, ¶¶ 28-54. Defendant is correct, particularly because Plaintiff did not attach a copy of Defendant's cardholder agreement. Plaintiff must file an amended complaint designating specific claims and/or theories under which it is entitled to judgment. Defendant's preliminary objection pursuant to Pa.R.C.P. No. 1028(a)(4) will be sustained.

#### IV. CONCLUSION

Plaintiff failed to attach sufficient documentation of the assignment of Defendant's account to Plaintiff, Defendant's cardholder agreement, and a statement of account. Defendant's first objection will be sustained. Plaintiff also did not plead its cause of action with specificity. Defendant's second objection will be sustained. Plaintiff did not specify the cause(s) of action it is pursuing. Defendant's third objection will be sustained.

An appropriate order follows.

#### ORDER

**AND NOW**, this 24th day of March, 2021, on the forgoing *Opinion*, **IT IS HEREBY ORDERED:**

1. As to the Defendant's preliminary objection related to whether the Plaintiff attached sufficient documentation 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 preliminary objection related to the Plaintiff's failure to attach the agreement between the original lender and the Defendant is **SUSTAINED**;

c. The preliminary objection related to the Plaintiff's failure to attach a sufficient statement of account is **SUSTAINED**;

d. The balance of this preliminary objection is **SUSTAINED**;

2. The Defendant's preliminary objection related to whether the *Complaint* is insufficiently specific is **SUSTAINED**;

3. The Defendant's preliminary objection seeking a demurrer based on the Plaintiff's failure to set forth a viable cause of action is **SUSTAINED**;

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.