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Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

**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 - Law No. 2020-3133

HOLDING: The Defendant’s preliminary objection asserting the Plaintiff failed to attach sufficient documentation of 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. Giuliana*, 829 A.2d 340, 345 (Pa. Super. 2003).

Pleading – Exhibits in a credit card debt case

3. 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).

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

5. 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

6. 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).

Pleading – Breach of contract

7. A plaintiff must plead three elements to successfully raise a breach of contract claim: 1) the existence of a contract, including its essential terms; 2) a breach of the contract; and 3) resultant damages. *Meyer; Darragh, Buckler, Bebenek, & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247 (Pa. 2016).

Appearances:

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 (PO)*, filed July 13, 2021, to Plaintiff’s *Amended Complaint*.

I. PROCEDURAL HISTORY

October 21, 2020, Plaintiff filed its *Notice of Appeal from Magisterial District Judge Judgment*. October 28, 2020, Plaintiff filed its *Complaint*. 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 *Preliminary Objections to Complaint* 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. On February 11, 2021[,], the Court heard oral argument. The Court sustained these *Preliminary Objections* on March 24, 2021; the Plaintiff was granted leave to file an amended complaint. *See Order* (March 24, 2021).

Plaintiff filed its *Amended Complaint* on April 9, 2021. Defendant filed the *PO* and their *Brief in Support of Preliminary Objections (Defendant’s Brief)* on July 13, 2021. Defendant also filed a *Praecepte to list for Argument* on July 13, 2021. Plaintiff filed its *Response to Defendant’s Preliminary Objections to Amended Complaint* and *Brief in Support of its*

Response to Defendant's Preliminary Objections to Amended Complaint (Plaintiff's Brief) on July 29, 2021. On September 9, 2021, the Court heard oral argument. This matter is ready for decision.

II. THE OBJECTIONS

Defendant raises three preliminary objections. First, Defendant objects the *Amended Complaint* fails to comply law or rule of court. See Pa.R.C.P. 1028(a)(2). This rule permits a preliminary objection for the failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter. Defendant specifically 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.” See *PO*, ¶ 2. Defendant raises this objection for three reasons. First, Defendant asserts Plaintiff did not attach or allege the terms of a cardholder agreement between Plaintiff and Defendant. See *PO*, ¶¶ 1, 11. Second, Defendant asserts Plaintiff did not attach a complete statement of account. See *PO*, ¶ 13. Third, Defendant asserts Plaintiff failed to explain the absence of any of these documents. See *PO*, ¶¶ 12, 19, 21.

Second, Defendant objects the *Amended Complaint* fails to sufficiently plead necessary facts. See Pa.R.C.P. 1028(a)(3). This rule permits a preliminary objection for insufficient specificity in a pleading. Defendant asserts the *Amended Complaint* is insufficiently specific as it does not attach the original signed credit agreement or allege the terms of an agreement between the parties. See *PO*, ¶ 24.

Third, Defendant objects the *Amended Complaint* is legally insufficient to state a cause of action. See Pa.R.C.P. 1028(a)(4). Pa. R.C.P. 1028(a)(4) permits a preliminary objection based on “legal insufficiency of a pleading (demurrer).” Defendant seeks a demurrer and asserts the *Amended Complaint* does not specify the legal theory upon which Plaintiff's claim(s) rest. See *PO*, ¶¶ 35-36.

III. CONCLUSIONS OF LAW

[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

Defendant raises this objection under under Pa.R.C.P. 1028(a)(2) pursuant to Pa.R.C.P. 1019(i). According to Pa.R.C.P. 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 *Amended Complaint* a copy of the written agreement containing the terms and conditions of the account, a complete statement of the account, or, in the alternative, failed to allege the reason for the unavailability of these documents. *See PO*, ¶¶ 1-21.

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). Defendant asserts Plaintiff failed to attach or allege the terms of Defendant’s cardholder agreement with the original creditor. *See PO*, ¶¶ 1, 11. 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). A plaintiff must either attach a signed agreement or plead the unsigned agreement as attached was the agreement between the parties/original creditor, and the defendant accepted the terms. In this case, Plaintiff has not pled why it could not produce the signed agreement. Plaintiff averred Exhibit A of the *Amended 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 Amended Complaint*, ¶ 8. These facts are insufficient to establish that the averred Exhibit A was, **in fact**, Defendant’s agreement with “Cit Online Bank.”¹

 Defendant asserts the monthly billing statements Plaintiff attached to

¹ This objection was identical to that raised by the Defendant to the original *Complaint*. In sustaining the Defendant’s objection at that time, the Court specifically noted the deficiencies and what the law requires on this issue. *See Opinion*, pp. 3 - 4 (March 24, 2021). The Plaintiffs *Amended Complaint* contains identical language as that already held objectionable by the Court. *See Amended Complaint*, ¶ 8; *see also Complaint*, ¶ 8. As the Plaintiff has done again what was previously held legally inadequate, the Plaintiff can reasonably expect the same result.

the *Amended Complaint* are insufficient as a complete statement of account as there are no purchases reflected in any of the billing statements and none of the payments reflected in the multiple billing statements bring the account balance to zero dollars. *See PO*, ¶¶ 17-18. 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 that 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 *Amended Complaint* has attached fifteen account statements containing the Defendant's name but a redacted account number. Based on the Superior Court's guidance in the above-cited cases, the Court is inclined to find the account statements attached by Plaintiff insufficient to put Defendant on notice of the amount due. Plaintiff did not attach a complete statement of account, or even a summary of the account's history that reasonably apprises the Defendant of the amount due and what charges gave rise to the amount claimed. The Court will sustain Defendant's preliminary objection under Pa.R.C.P. 1028(a)(2).

B. Whether Plaintiff Pled its Cause of Action with Specificity

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 based on Plaintiff's failure to attach the original signed credit agreement and failure to allege the terms of an agreement between the parties. *See PO*, ¶¶ 23-24.

As previously explained, Plaintiff did not attach the relevant signed agreement between the parties or attach a copy of an agreement and allege it is the actual agreement between the parties; neither did the Plaintiff explain the absence of these documents. Without a copy of the agreement, Defendant cannot identify what terms and conditions are alleged to apply and adequately prepare a defense. The Court will sustain Defendant's preliminary objection under Pa.R.C.P. 1028(a)(3).

C. Demurrer

Under Pa.R.C.P. 1028(a)(4), a party may file a preliminary objection seeking a demurrer. Defendant objects that the *Amended Complaint* does not set forth a viable cause of action, such as breach of contract, unjust enrichment, or account stated. *See PO*, ¶¶ 33-62. At oral argument, Plaintiff's counsel advised the Court the Plaintiff is proceeding only under a breach

of contract theory.

A plaintiff must plead three elements to successfully raise a breach of contract claim: 1) the existence of a contract, including its essential terms; 2) a breach of the contract; and 3) resultant damages. *See Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247 (Pa. 2016).

Here, the Plaintiff pled the existence of an agreement between the Defendant the original creditor. *See Amended Complaint*, ¶ 3. The Plaintiff did not plead the essential terms of the agreement, *i.e.*, terms of credit extension, terms of repayment, etc. As the Court noted above, the failure to attach either the signed agreement, or an example of the agreement with an affirmative assertion it is the agreement, prevents the Court from considering Plaintiff's Exhibit A as supplementing the sparse factual assertions in the *Amended Complaint* itself.

The Plaintiff also fails to adequately plead a breach of the agreement. The Plaintiff avers, "Defendant failed to make full payment of the amount owed on the account." *Amended Complaint*, ¶ 5. The Plaintiff does not state the failure "to make full payment" was in violation of the agreement, what specific repayment term was violated, when the violation began, etc., etc. This is clearly insufficient to properly state a breach of the agreement.

As to damages, the Plaintiff simply states, "The account shows that the Defendant owes a balance of \$1,680.31." *Amended Complaint*, ¶ 7. Although about as bare-bones as you can get, the Court finds this sufficient at this procedural stage to constitute an averment of damages.

The Plaintiff has failed to properly plead a cause of action for breach of contract. Therefore, the Defendant's preliminary objection in the nature of a demurrer will be sustained.

IV. CONCLUSION

Plaintiff failed to attach the writing to the *Amended Complaint* upon which it bases its claims, as required by Pa.R.C.P. 1019(i). Plaintiff did not plead its cause of action with specificity. The Plaintiff failed to adequately plead a cause of action for breach of contract. The Defendant's *Preliminary Objections to Amended Complaint* will be sustained. The Plaintiff will be granted leave to file a second amended complaint.

An appropriate order follows.

ORDER OF COURT

NOW, this 15th day of October, 2021, on the forgoing *Opinion*, **IT IS HEREBY ORDERED** that the Defendant's *Preliminary Objections*, filed July 13, 2021, are **SUSTAINED** in their entirety.

IT IS FURTHER ORDERED that the Plaintiff is granted twenty (20) days from notice of this order to file a second amended complaint.

Notice of this judgment shall be given pursuant to Pa.R.C.P. 236.