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Citibank v. Hopkins

CITIBANK (SOUTH DAKOTA), NA, Plaintiff,
v. RICHARD J. HOPKINS, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Fulton County Branch
Civil Action - Law, No. 67 of 2004-C

Debt collection action; Motion for judgment on the pleadings denied

1. A motion for judgment on the pleadings is similar to a demurrer; the court should grant the motion only where the pleadings and attachments show that no genuine issue of fact exists and the movant is entitled to judgment as a matter of law.
2. A pleading that is inartful but otherwise relevant and appropriate does not furnish a basis for granting a motion for judgment on the pleadings; the court should instead give the pleader an opportunity to cure technical defects.
3. There is no fixed rule for deciding whether a denial in an answer is specific enough to overcome the assertion that such denial is so general as to constitute an admission; the court may allow a party to amend in order to provide a more specific denial.
4. Where the pleadings as a whole show that defendant did repeatedly dispute plaintiff's representations as to the existence of a debt, and a question of law remained as to defendant's right to rely on the Federal Fair Debt Collection Practices Act, the court denied plaintiff's motion for judgment on the pleadings.

Appearances:

Burton Neil, Esq., *Counsel for Plaintiff*

Richard J. Hopkins, *Defendant*

OPINION

Herman, J., April 12, 2005

Introduction

Plaintiff filed a complaint seeking judgment for sums allegedly due under a credit card agreement. Defendant, proceeding *pro se*, filed an answer. Plaintiff then filed a motion for judgment on the pleadings and defendant responded. Both sides have filed written argument. The matter is ready for decision.

Background

Plaintiff issued a credit card to defendant and sent him monthly statements purporting to show debits and credits to his account. Plaintiff alleged in the complaint that defendant never disputed or objected to the statements, including the statement with a closing date of July 10, 2003, a copy of which is attached to the complaint as Exhibit A. That statement shows a balance of \$8,787.02 due on August 4, 2003. Plaintiff alleges that by not disputing the figures in the monthly statement, defendant has agreed to

the accuracy of the amount due.

As to whether plaintiff maintained an accurate record of all debits and credits to the account in its books, defendant answered that he did not have enough information to either admit or deny and therefore denied that averment. As to whether the statement mailed to defendant was accurate as to the debits and credits for the prior billing cycle, defendant admitted having received monthly statements but could not attest to those statements' accuracy. As to whether defendant ever disputed or objected to the information contained in the monthly statements, the defendant denied same, averring that he twice wrote to plaintiff, first on August 6, 2003, and again on October 1, 2003, requesting plaintiff to "validate" the account "with a signed and dated copy of the alleged contract that stated the terms and conditions that I allegedly agreed to." Copies of these two letters, plus another letter dated October 29, 2003, are attached to the complaint. As to plaintiff's allegation that, by not disputing or objecting to the [monthly] statement, including Exhibit A, defendant agreed to the balance due in the amount of \$8,787.02, defendant answered as follows: "Defendant denies the allegations." Defendant then raised twelve "affirmative defenses" and asked the court to dismiss the complaint with prejudice. Defendant's answer lacked a verification. Plaintiff filed a reply to new matter, thereby closing the pleadings. Plaintiff then filed this motion for judgment on the pleadings.

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Discussion

Legal Standard

After the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings. The motion is similar to a demurrer. Citicorp North America, Inc. v. Thornton, 707 A.2d 536 (Pa.Super. 1998). The court should grant such a motion only where the pleadings and attached documents demonstrate that no genuine issue of fact exists and the moving party is entitled to judgment as a matter of law. Pa.R.C.P. 1034; Vetter v. Fun Footwear Co., 668 A.2d 529 (Pa.Super. 1995). Judgment on the pleadings may not be granted unless the case is so free from doubt that a trial would clearly be a fruitless exercise. Shirley by Shirley v. Javan, 684 A.2d 1088 (Pa.Super. 1996).

A pleading which is inartfully pled but otherwise relevant and appropriate does not furnish a basis for a motion for judgment on the pleadings. The court should instead give the party an opportunity to cure technical defects. Pilotti v. Mobil Oil Corp., 565 A.2d 1227 (Pa.Super. 1989). This kind of motion is appropriate where the case rests on the construction of a written agreement. In that situation, the contract must be attached to the pleadings. Groff v. Pete Kingsley Building, Inc., 543 A.2d 128 (Pa.Super. 1988). If it is not, the court may allow a party to amend its pleadings accordingly.

Application of the Legal Standard

Plaintiff makes two strictly technical arguments in support of its motion. First it contends that defendant's answer is irredeemably defective because it lacks a verification. We disagree. It is wholly appropriate to give a defendant an opportunity to amend in order to correct this omission. Pilotti, supra.

Second, plaintiff contends that defendant's answers are general denials only, which are tantamount to admissions. Again, we disagree. There is no fixed rule for determining whether a denial is specific enough to survive such a challenge. The court makes this determination in light of the particular averments involved in the case and an examination of the pleadings as a whole. Roberson v. Davis, 580 A.2d 39 (Pa.Super. 1990); In re Estate of Roart, 568 A.2d 182 (Pa.Super. 1989). As with a missing or defective verification, the court may give a defendant an opportunity to amend his pleading to provide more specific denials if necessary. Swift v. Milner, 538 A.2d 28 (Pa.Super. 1988); Pa.R.C.P. 1029(b) and (c).

We have carefully examined the complaint and answer, focusing on paragraphs 7-9. Paragraph 7 of the complaint avers: "Defendant received the monthly statements from plaintiff for the credit card account, including the statement attached as Exhibit A [dated July 10, 2003], **without protest, dispute or objection.**" [Emphasis supplied.] Defendant's answer to this averment is: "Defendant denies the allegations contained in Paragraph 7 of the Complaint and further states that on August 6, 2003 and again on October 1, 2003, I requested that the Plaintiff Validate this account with a signed and dated copy of the alleged contract that stated the terms and conditions that I allegedly agreed to." Paragraph 8 of the complaint avers: "Defendant, **by not protesting, disputing, or objecting to the statements**, including the Exhibit A statement, thereby assented and agreed to the correctness of the balance due on the credit card account so as to constitute an account stated." [Emphasis supplied.] Defendant answered as follows: "Defendant denies the allegation contained in Paragraph 8 of the Complaint." Paragraph 9 of the complaint avers: "The amount due plaintiff on the account stated, less credits, if any issued subsequent to the

Exhibit A statement, is \$8,787.02." Defendant answered as follows: "Defendant denies the allegations contained in Paragraph 9 of the Complaint."

Contrary to plaintiff's contention, defendant was very specific in his answer as to why he is denying the allegation in paragraph 7 and he attaches correspondence showing he did in fact contact plaintiff by letter in a timely manner to dispute the debt and to request "validation by way of **signed and dated contractual terms and agreement** that I have an obligation to [defense counsel] or your client, pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692(g)." [Letter of August 5, 2003; emphasis in original.] Defendant sent a second letter dated October 1, 2003, entitled "Second Request for Validation of Debt," in which he reiterated his request for a copy of the original contract in order "to ascertain the true identity of the debtor," among other information, again citing section 1692(g) of the Act. A third letter dated October 28, 2003, was sent to plaintiff which is, in all relevant ways, identical to the October 1st letter. In addition, his twelve "affirmative defenses" refer to his repeated attempts to have plaintiff validate the contract under the Act.

In terms of pleading requirements, we find defendant's denials sufficient to ward off the contention that they are too general to constitute anything but admissions. Although at first glance, defendant's responses to paragraphs 8 and 9 are insufficient and should result in those paragraphs being admitted as true, it is hardly surprising or unreasonable, given defendant's response to paragraph 7, that his response to paragraphs 8 and 9 would be only general denials. In light of the pleadings as a whole, we will not grant plaintiff's motion for judgment on the pleadings based on defendant's inartful and technically imperfect answer.

To address the rest of plaintiff's arguments, we set out the section of the Fair Debt Collection Practices Act cited by defendant in his answer:

§ 1692(q). Validation of debts.

(a) Notice of debt; contents. Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing -

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor...

(b) Disputed debts. If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(c) Admission of liability. The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

Plaintiff argues that the Act has no application to this case and that defendant's request for validation is frivolous. It is clear, however, that the Act does generally apply to consumer debts, with protections in place for both debtors and creditors. Greer v. Shapiro & Kreisman, 152 F. Supp. 679 (E.D.Pa. 2001); Adams v. Law Office of Stuckert & Yates, 926 F.Supp. 521 (E.D. Pa. 1996); Teel v. Panarella, 16 Pa. D&C 4th 271 (1993). Plaintiff further argues that an allegedly unsatisfied validation request does not constitute an affirmative defense to a collection action under the Act in any event. However, this remains an open legal

question in so far as plaintiff cites no case law which expressly addresses this issue and therefore this court is not prepared at this juncture to foreclose this defendant from using the Act as a basis for a defense.

Plaintiff next argues that, assuming the Act does apply to this case, plaintiff has complied with it. Plaintiff pleads in its reply to new matter that it provided defendant on October 20, 2003, with written validation as requested. We are constrained to note, however, that plaintiff has not made this document part of the record. Its contents being unknown to the court, we are not in a position to determine whether it should have satisfied defendant's concerns. Also, plaintiff failed to attach to its complaint a copy of the notice required by §1692(g)(a) and therefore the court is not in a position to know whether plaintiff complied with that section.

Perhaps most puzzling is paragraph 7 of the complaint in which plaintiff avers that defendant never protested, disputed or objected to the July 10, 2003, billing statement. By contrast, the record clearly shows that defendant did in fact send plaintiff a timely letter disputing the debt on or about August 6, 2003. This letter was followed by two others delivered to plaintiff on October 1, 2003, and October 29, 2003. Plaintiff has failed to put to rest what appears to be a genuine dispute of material fact appearing from the face of the pleadings. In this connection, we note §1692(g)(c) which prohibits any court from concluding that a consumer who fails to dispute a debt's validity has thereby admitted liability. In the case at bar, the defendant-consumer has, at least facially, disputed the debt 's validity.

Granting plaintiff's motion for judgment on the pleadings would completely and precipitously eliminate the possibility of any defense to this collection action. Where both factual and legal questions remain unresolved, it would be inappropriate to grant the motion at this time.

ORDER OF COURT

Now this 12th day of April 2005, the Court hereby denies plaintiff's motion for judgment on the pleadings. Defendant is granted 30 days from receipt of this Order to file a verification for attachment to his answer to the complaint.