

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

CIVIL ACTION

ATLANTIC CREDIT & FINANCE, INC., :
Assignee from Household Bank, :

Plaintiff, :

Vs. :

JEFFREY D. GARDNER, :

Defendant. : NO. 3160 OF 2007 G.D.

FILED
2009 MAY 14 A 9 18

OPINION and ORDER

WARMAN, J.

Presently before this Court for disposition are Preliminary Objections filed by the Defendant to the Complaint filed by Plaintiff. Plaintiff in its complaint alleges that it is a debt buyer and successor in interest to the original creditor and seeks recovery for credit card debt.

Defendant objects pursuant to Pa.R.C.P. 1028 and alleges that Plaintiff has (1) failed to attach documents supporting amount claimed; (2) failed to attach account application and agreement; (3) failed to attach proof of assignment; and (4) failed to prove its right to bring this action in the courts of Pennsylvania.

BACKGROUND

This action is based upon an alleged credit card debt incurred by the Defendant. Plaintiff alleges in its complaint that it is a "debt buyer" and successor in interest to the original creditor. In an affidavit attached to the Complaint, Plaintiff alleges that Defendant defaulted on Household Bank account number 5433390001537241, and that the account was subsequently sold to Plaintiff with a balance of \$3,875.70. In Paragraph Four of its Complaint, Plaintiff alleges that the Defendant received and accepted goods and merchandise and/or accepted services or cash advances through the use of the credit card. Plaintiff further alleges that a true and correct copy of the statement of account is attached hereto as Exhibit "A." No such statement of account is attached to the Complaint.

Plaintiff has not attached to the Complaint any contract or agreement between Household Bank and the Defendant. The only attachment to the Complaint is a one-page document titled "Affidavit of Debt and Verified Bill of Particulars." The Affidavit is executed by a Heather Clary who is designated therein as "Assistant Director of Forwarding." The Affidavit does not reveal the relationship of the affiant to the entities involved in this case, i.e., whether the affiant is employed by counsel, Plaintiff, or Household Bank. The Affidavit alleges that the affiant is familiar with the

policies and practices as well as the books and records of the Plaintiff and not those of the original creditor to which Defendant was allegedly indebted.

DISCUSSION

In ruling on preliminary objections, this Court must accept as true all well-pleaded facts and all inferences reasonably deductible therefrom. Dorfman v. Pennsylvania Social Services Union Local 668 of the Service Employees International Union, 752 A.2d 933 (Pa.Cmwlth. 2000). However, we need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion. Id. Turner v. Pennsylvania Board of Probation and Parole, 749 A.2d 1018 (Pa.Cmwlth. 2000).

Defendant, in his preliminary objections contends that Plaintiff's failure to plead any particulars with regard to the assignment of the alleged debt from the original creditor and its failure to attach a copy thereof to its complaint is fatal to Plaintiff's successful recovery. Paragraph 1 of the Complaint merely sets forth that Plaintiff "is a debt buyer and successor in interest to the original creditor."

Pennsylvania Rules of Civil Procedure, Rule 1019 sets forth the requirements which must be adhered to when filing a complaint.

Pennsylvania remains a fact pleading, as opposed to notice pleading, jurisdiction. The complaint must contain the material facts on which the cause of action is based stated in a concise and summary form. Pa.R.C.P. 1019(a). Material facts sufficient to meet the requirement of the rule, are those that are essential to show the liability that is sought to be enforced. A complaint must do more than give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. It should formulate the issues by fully summarizing the material facts. Baker v. Rangos, 229 Pa. Super. 333, 324 A.2d 498 (1974).

Pa.R.C.P. 1019(j) provides that when a claim is based upon a writing the pleader shall attach a copy of the writing, or the material part thereof, to its pleading. The Rule also provides that if the writing is not accessible to the pleader, it is sufficient to so state, together with the reason why it is not accessible; however, the pleader must also set forth the substance of the document in writing. Ordinarily, a complaint should be stricken for failure to attach an essential document. Adamo v. Cini, 656 A.2d 576 (Pa.Cmwlth. 1995).

Each and every assignment of a debt is essential to the establishment of a claim asserted against the debtor. The plaintiff must demonstrate that it has standing to pursue the claim asserted in this action.

Pa.R.C.P. 2002 provides that, with certain exceptions not applicable to this case, all actions shall be prosecuted by and in the name of the real party in interest. According to the observations of Goodrich-Amram, "Because the Rule [Pa.R.C.P. 2002] setting forth the requirement that actions be prosecuted by real parties in interest requires the facts of an assignment to be pleaded in a complaint, such an assignment is an essential part of the plaintiff's case and becomes a document upon which the plaintiff relies; thus, this subdivision of the Rule [Pa.R.C.P. 1019(i)] requires its attachment as an exhibit." Goodrich-Amram 2d, Section 1019(i):1. The Superior Court, in an action involving the alleged assignment of a credit card debt, found that plaintiff's failure to attach the writings establishing its right to judgment was fatal to the claims set forth in the complaint. Atlantic Credit and Finance v. Giuliana, 829 A.2d 340, 345 (Pa. Super. 2003).

Defendant also objects that Plaintiff failed to attach to the complaint the account application and agreement evidencing a contract between the alleged original creditor, Household, and Defendant, as required by Pa.R.C.P. 1019. The Complaint alleges that Plaintiff was the holder of a credit card "under the terms of which the plaintiff agreed to extend to the defendant" and that Defendant "agreed to perform the terms and conditions prescribed by Plaintiff" however no writing is attached to the

complaint evidencing any such agreement or any such terms and conditions. (Complaint par. 2 and 3.) Plaintiff has failed to attach to its Complaint any document evidencing a contractual relationship between Defendant and Plaintiff's alleged assignor, nor does the complaint set forth the substance, "terms and conditions prescribed" of any such contract.

Defendant also objects that the Complaint is lacking in specificity in that it fails to include any information as to the date or time period when the credit card was used, credits for any payments made or the dates and amounts of any interest or other charges. We note that no statement of account was attached to Plaintiff's complaint. Pa.R.C.P. 1019(f) provides that: "Averments of time, place and items of special damage shall be specifically stated." The complaint merely alleges that "All the credits to which the defendant is entitled have been applied and there remains a balance due in the amount of \$3,875.70." This allegation comes nowhere near to satisfying the requirements of Rule 1019.

Under Rule 1019, a complaint must include the amounts of the charges that are part of the claim, the dates of the charges, credits for payments if any, dates and amounts of interest charges, and dates and amounts of other charges. The complaint should contain sufficient documentation and allegations to permit a defendant to calculate the total amount of damages that are allegedly due by reading the

documents attached to the complaint and the allegations within the complaint.

Worldwide Asset Purchasing, LLC v. Stern, 153 PLJ 111, (Wettick 2004).

We agree with the holding of Justice McEwen in Atlantic Credit and Finance v. Giuliani, supra, wherein he found that appellant's preliminary objections based upon the failure of Atlantic to produce the cardholder agreement, statement of account and evidence of the assignment were clearly meritorious.

Defendant's last Preliminary Objection requests that the Plaintiff's Complaint be dismissed pursuant to 1028(a)(4)(sic) since Plaintiff has failed to establish in its Complaint its right to bring the current action in the courts of this Commonwealth. A preliminary objection may be made pursuant to Pa.R.C.P. 1028(5) based on lack of capacity to sue. While the address of Plaintiff's place of business is not set forth in the body of the Complaint, it is contained within the caption and set forth as 3353 Orange Avenue, Roanoke, Virginia. Defendant contends that since Plaintiff is a foreign corporation it must allege or prove that it is registered to do business within the Commonwealth of Pennsylvania.

15 Pa.C.S.A. §4121(a) of the Foreign Business Corporation Law provides that "a foreign business corporation, before doing business in this Commonwealth, shall procure a certificate of authority to do so from the

Department of State, in the manner provided in this subchapter." Defendant asserts that pursuant to 15 Pa.C.S.A. §4141, the Plaintiff, as a foreign corporation, is prohibited from pursuing the present action against the Defendant since the Plaintiff has not alleged or proven that it has complied with the requirements of the statute requiring registration with the Department of State. Section 4141 of the Foreign Business Corporation Law provides, in pertinent part, as follows:

(a) Right to bring actions or proceedings suspended. – A nonqualified foreign business corporation doing business in this Commonwealth within the meaning of Subchapter (B) (relating to qualification) shall not be permitted to maintain any action or proceeding in any court of this Commonwealth until the corporation has obtained a certificate of authority. ...

15 Pa.C.S.A. §4141(a).

The question before the Court is whether the Plaintiff's actions in maintaining the present lawsuit against the Defendant constitutes "doing business" within the Commonwealth of Pennsylvania. Not all activities engaged in by a foreign corporation constitute doing business in this Commonwealth. 15 Pa.C.S.A. §4122 sets forth a non-exclusive list of activities that, when engaged in by a foreign corporation, do not constitute "doing business" and therefore do not require the procuring of a certificate of authority. 15 Pa.C.S.A. §4122 provides, in pertinent part:

Section 4122. Excluded Activities

(a) General Rule. – Without excluding other activities that may not constitute doing business in the Commonwealth, a foreign business corporation shall not be considered to be doing business in this Commonwealth for the purposes of this subchapter by reason of carrying on in this Commonwealth any one or more of the following acts:

...

(8) Securing or collecting debts or enforcing any rights in property securing them.

15 Pa.C.S.A. §4122(a). The Committee Comment to this statute indicates as follows:

– This section does not attempt to formulate an inclusive definition of what constitutes the transaction of business. Rather, the concept is defined in a negative fashion by subsection (a), which states that certain activities do not constitute the transaction of business.

...

A corporation is not "doing business" solely because it resorts to the courts of this Commonwealth to recover an indebtedness, enforce an obligation, recover possession of personal property, obtain the appointment of a receiver, intervene in a pending proceeding, bring a petition to compel arbitration, file an appeal bond, or pursue appellate remedies. ...

The present action was filed by the Plaintiff for the purpose of collecting a credit card debt allegedly owed by the Defendant. In maintaining the present action the Plaintiff is not "doing business" within the Commonwealth of Pennsylvania and therefore was not required to procure a certificate of authority for doing business from the Department of State prior to commencement of suit.

Upon consideration of the foregoing, Defendant's preliminary objections pursuant to Pa.R.C.P. 1028(a)(2)(3) are SUSTAINED. The preliminary objection pursuant to 1028(a)(5) is OVERRULED.

BY THE COURT:



RALPH C. WARMAN, JUDGE

ATTEST:

PROTHONOTARY