

IN THE COURT OF COMMON PLEAS OF BLAIR COUNTY, PENNSYLVANIA

PALISADES COLLECTION, L.L.C. :
ASSIGNEE OF CHASE MANHATTAN BANK :
Plaintiff, :
v. :
JANE M. GRASSMYER, :
Defendant. :

2007 GN 2840

ELIZABETH A. DOYLE	PRESIDING JUDGE
SARAH E. EHASZ, ESQ.	COUNSEL FOR PLAINTIFF
DIANA K. INGERSOLL, ESQ.	COUNSEL FOR DEFENDANT

ORDER AND OPINION

ORDER

AND NOW, this 15th day of January 2008, the Court having considered the preliminary objections of Defendant to the amended complaint, it is hereby ORDERED, DIRECTED, and DECREED that Defendant's first, second and third preliminary objections to Plaintiff's amended complaint are SUSTAINED. Defendant's fourth preliminary objection is OVERRULED. Plaintiff is granted leave to amend the Amended Complaint within twenty (20) days of the date of this order. If the Plaintiff fails to amend the amended complaint in accord with this opinion, the Court reserves the right to dismiss the amended complaint.

OPINION

This matter comes before the Court on preliminary objections filed by Defendant Jane M. Grassmyer to Plaintiff's amended complaint. The Court has reviewed the

preliminary objections and the brief in support thereof, as well as Plaintiff's response and brief in support thereof. This matter is now ready for disposition.

Procedural History

This case began with a complaint filed on May 29, 2007. Defendant filed Preliminary Objections on June 19, 2007, and a brief in support of preliminary objections on July 11, 2007. Plaintiff filed an Amended Complaint on July 10, 2007. Defendant filed Preliminary Objections to Plaintiff's Amended Complaint on July 24, 2007 and the brief in support on August 10, 2007. Plaintiff filed a response on August 14, 2007 and brief in support on August 31, 2007.

Factual History

Defendant was issued an open end credit card by Plaintiff's assignor on or about November 1, 2001. Defendant has been a regular user of said credit card and Plaintiff alleges Defendant was provided with copies of the Statements of Account showing all debits and credits for transactions on the credit card. Defendant made her last payment on the account on June 8, 2005. As of the date of filing of the original complaint, Plaintiff alleges the remaining principal balance due owing and unpaid is Eight Thousand Three Hundred Ninety-Five and 36/100 (\$8,395.36) Dollars; the amount of interest accrued is Eight Hundred Seventy and 81/100 (\$870.81) Dollars.

Discussion

Defendant has raised four preliminary objections to Plaintiff's Amended Complaint: (i) failure to attach a signed written contract between Plaintiff and Defendant pursuant to Pa.R.C.P. No. 1028(a)(2), and 1019(h) and (i); (ii) failure to attach a valid written assignment from Chase Manhattan Bank to any other entity, properly identifying

the account alleged to be owed by Defendant pursuant to Pa.R.C.P. No. 1028(a)(2) , and 1019(h) and (i); (iii) insufficient specificity pursuant to Pa.R.C.P. No. 1028(a)(3); and (iv) lack of verification in conformity with Pa.R.C.P. No. 1028(a)(2) and 1024.

Pa.R.C.P. No 1028 states, in pertinent part:

(a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

- (2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;
- (3) insufficient specificity in a pleading;

Pa.R.C.P. No. 1028(a)(2) and (3).

Pa.R.C.P. No. 1019 states, in pertinent part:

a) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.

...

(f) Averments of time, place and items of special damage shall be specifically stated.

(g) Any part of a pleading may be incorporated by reference in another part of the same pleading or in another pleading in the same action. A party may incorporate by reference any matter of record in any State or Federal court of record whose records are within the county in which the action is pending, or any matter which is recorded or transcribed verbatim in the office of the prothonotary, clerk of any court of record, recorder of deeds or register of wills of such county.

(h) When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written.

Note: If the agreement is in writing, it must be attached to the pleading. See subdivision (i) of this rule.

(i) When 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 or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.

Pa.R.C.P. No. 1019(a), (f), (g), (h) and (i).

Defendant avers in her first preliminary objection that the Amended Complaint references a written contract between the parties, but the same is not attached, as required by Pa.R.C.P. No. 1019(h). Further, Defendant argues, the account history marked as Exhibit "B," nor the copy of the written terms and conditions governing the Account attached and marked as Exhibit "C" to Plaintiff's Amended Complaint do not satisfy the requirement of Pa.R.C.P. No. 1019(i). Moreover, Defendant argues that Plaintiff's Amended Complaint does not indicate that an agreement is incorporated by reference or reference an agreement recorded in any state or federal court, or any other public repository that would allow incorporation by reference pursuant to Pa.R.C.P. No. 1019(g). Plaintiff argues that they have complied with Rule 1019(i) because they stated in the Complaint that Defendant was issued an open end credit card, that Defendant was a regular user of said card, that Defendant made sporadic and irregular payments, and because a copy of the terms and conditions governing said account and a copy of the account history was attached. Plaintiff argues that all necessary information was referenced in Plaintiff's Amended Complaint.

Marine Bank v. Orlando held that Pa.R.C.P. 1019(h) is complied with by attaching a copy of issuer/cardholder agreement to the complaint. 25 Pa. D. & C.3d 264 (Pa.Com.Pl. 1982). However, the court found that the Plaintiff did not meet the requirements of Pa. R. C. P. 1019 (f) by failing to state in the complaint, " averments of the time, place and specific averments of damage which have arisen as the result of non-payment of the same." Id.

Upon review of Plaintiff's Amended Complaint, we find that Exhibits B and C, the "account history" and "written terms and conditions," respectively, fail to meet the requirements of Pa.R.C.P. No. 1019 (g) and (i). Plaintiff states in Paragraph 5 of the Amended Complaint that the account in question was created through a written contract, but fails to attach said signed contract to the complaint. The account history, Exhibit B, is a mere recitation and does not include any specific information regarding when or where charges were accrued or in what amount. Similarly, the written terms and conditions, Exhibit C, does not prove that a contract existed between Defendant and Plaintiff's predecessor in interest. Plaintiff fails to state why a copy of the written, signed contract is not attached to the Amended Complaint. Defendant's first preliminary objection is therefore sustained.

In her second preliminary objection, Defendant asserts that Plaintiff failed to attach a valid written assignment from Chase Manhattan Bank to any other entity, properly identifying the account alleged to be owed by Defendant, nor its absence explained, as required by Pa.R.C.P. No. 1019(h) and (i). Defendant asserts that Exhibit A to Plaintiff's Amended Complaint, a Bill of Sale, does not meet the requirements of the law. Defendant asserts that the Bill of Sale is the only document in existence pertaining to the assignment of this account. Further, Defendant states that this account, along with others, was transferred electronically and as a result no documents exist particularly identifying this account.

While Plaintiff explained that no other documents exist outside of the Bill of Sale due to the account's electronic transfer in its response to Defendant's preliminary objections, Plaintiff failed to make this explanation in their Amended Complaint.

Further, the Bill of Sale does not reference Defendant's account number and as such does not prove that this account was assigned to Plaintiff. As the Amended Complaint and Exhibit A fail to meet the requirements of Pa.R.C.P. No. 1019(h) and (i), Defendant's second preliminary objection is sustained.

In her third preliminary objection, Defendant maintains that Plaintiff has made claims for money owed but failed to provide documentation or accounting of charges allegedly made by Defendant, such as a breakdown of charges, payments, and interest as required by Pa.R.C.P. No. 1019(a) and (f). Plaintiff argues that Defendant was a regular user of said credit card, a copy of the terms and conditions of the credit card was attached to the Amended Complaint, and a detailed account history, containing all necessary information was attached to the Amended Complaint.

A "defendant is entitled to know the dates on which individual transactions were made, the amounts therefore and the items purchased to be able to answer intelligently and determine what items he can admit and what he must contest." Marine Bank, 25 Pa. D. & C.3d 264.

[T]he proper procedure [to correct a failure to comply with Pa.R.C.P. No. 1019(a) and (f)] is to require [plaintiff] to file an amended pleading specifying the dates and times of [plaintiff's] performance and demands for payment, pursuant to the alleged contract. It should also attach the relevant invoices to its amended complaint. A more specific pleading will better enable [defendant] to prepare its defense and address the issues.

St. Hill and Associates, P.C. v. Capital Asset Research Corp., Ltd., 2000 WL 33711023, *2 (Pa.Com.Pl., 2000).

The Court finds the account history attached as Exhibit B is not "detailed" at all and does not afford Defendant the opportunity to see a specific documentation of charges and transactions in order to formulate a response. Plaintiff's assertion that

they provided all necessary information in the Amended Complaint is found to be wanting. Plaintiff's have not provided sufficient facts from which Defendant can form a response in accord with Pa.R.C.P. No. 1019(a) and (f). Therefore, Defendant's third preliminary objection is sustained.

Defendant's fourth preliminary objection contends that the verification attached to the Amended Complaint is improper pursuant to Pa.R.C.P. No. 1024.

Pa.R.C.P. No. 1024 states:

(a) Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer's personal knowledge or information and belief and shall be verified. The signer need not aver the source of the information or expectation of ability to prove the averment or denial at the trial. A pleading may be verified upon personal knowledge as to a part and upon information and belief as to the remainder.

(b) If a pleading contains averments which are inconsistent in fact, the verification shall state that the signer has been unable after reasonable investigation to ascertain which of the inconsistent averments, specifying them, are true but that the signer has knowledge or information sufficient to form a belief that one of them is true.

(c) The verification shall be made by one or more of the parties filing the pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading. In such cases, the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of the person's information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by a party.

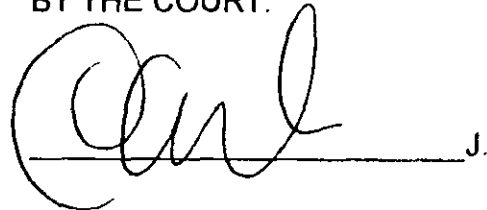
Pa.R.C.P. No. 1024. Defendant states that Plaintiff's verification is signed by the attorneys for Plaintiff, not Plaintiff itself, and does not meet any exception within Pa.R.C.P. No. 1024. Plaintiff argues that it indeed meets the requirements of Pa.R.C.P. No. 1024(c) because the party is outside of this Court's jurisdiction and that Plaintiff's attorneys authorized the verification in order to file within an expedient and timely

manner, all of which is stated in the verification itself. Defendant argues that Plaintiff provides no explanation for why Plaintiff was unable to sign the verification; further, Defendant argues there is no indication that time limits existed that would prevent Plaintiff from signing the verification.

Upon review, the Court finds the verification comports with the requirements of Pa.R.C.P. No. 1024. An attorney for Plaintiff, in writing and in filing a complaint, certainly has sufficient information to verify the complaint to the best of their ability. Further, Plaintiff sufficiently explained in the verification itself the reasons why it was signed by Plaintiff's attorney and not Plaintiff. For these reasons, Defendant's fourth preliminary objection is OVERRULED.

For these reasons the above order was issued with respect to the Defendant's preliminary objections.

BY THE COURT:

A handwritten signature in black ink, appearing to be "C. J.", is written over a horizontal line. The signature is cursive and stylized.