

Docs with complaint

MIDLAND FUNDING LLC

: COURT OF COMMON PLEAS OF
: BLAIR COUNTY, PENNSYLVANIA

vs.

: NO. 07 GN 4983

TAMMY SNYDER
Defendant

HON. HIRAM A. CARPENTER III

: PRESIDING JUDGE

YALE D. WEINSTEIN, ESQUIRE

: COUNSEL FOR PETITIONER

EVANGELINE WRIGHT, ESQUIRE

: COUNSEL FOR DEFENDANT

OPINION AND ORDER

This matter comes before the Court for disposition of preliminary objections to Plaintiff's Amended Complaint. Plaintiff, Midland Funding LLC (hereinafter Plaintiff), initiated this action by filing a complaint on September 10, 2007. The complaint was served via sheriff's service upon Defendant Tammy Snyder (hereinafter Defendant) on September 11, 2007. Defendant filed preliminary objections to Plaintiff's Complaint on September 24, 2007 and a Brief in support of the preliminary objections on October 11, 2007. As a result, Plaintiff filed an Amended Complaint on October 15, 2007. Defendant then filed preliminary objections to the Plaintiff's Amended Complaint on November 5, 2007 and a supporting Brief on November 26, 2007. Responding, Plaintiff filed a Memorandum of Law in Opposition to the to Defendant's Preliminary Objections on December 17, 2007.

In the Amended Complaint, Plaintiff alleges that Defendant opened a credit card account with Aspire Visa. Plf.'s Amend. Comp. ¶ 3, 6 (Oct. 15, 2007). Plaintiff further alleges that

Defendant made various purchases with that card and that "defendant is in default on the credit card account." Id. at ¶ 6. Defendant is now allegedly in default for the total amount of \$1,009.77 Id. at ¶ 5.

Plaintiff attaches to its Amended Complaint Exhibit A, a "Transaction History," which has Defendant's name and the alleged assigned Aspire Visa account number. Plaintiff attaches as Exhibit B, a copy of a document, or part of a document, with the words "Important Information: Bank Credit Card Agreement" in boldface. Plaintiff further alleges that it purchased the credit card account from Aspire Visa and that Plaintiff now the holder and owner of the account. Id. at ¶ 7. There is no written agreement for the assignment attached to the Amended Complaint.

As previously stated, Defendant filed a new set of preliminary objections to the Amended Complaint on November 5, 2007 with a brief in support on November 26, 2007. Plaintiff filed a Memorandum of Law in Opposition to Defendant's Preliminary Objections on December 17, 2007.

This Court now proceeds to disposition.

DISCUSSION

Pennsylvania is a fact-pleading jurisdiction wherein a claimant must set forth the facts upon which a cause of action is based. Alpha Tau Omega Fraternity v. University of Pennsylvania, 464 A.2d 1349 (Pa. Super. 1983). Pa.R.C.P. 1091 (a) states that "the material facts on which a cause of action or defense is based shall be stated in a concise and summary form. In addition, a pleading must be "sufficiently specific so as to enable a defendant to prepare [its] defense. Smith v. Wagner, 558 A.2d 1308, 1310 (Pa. Super. 1991). Preliminary objections may be sustained where no amendment of the complaint could cure the defect. *See Hohensee v.*

Shapp, 395 A. 2d 636 (Pa. Cmmw. 1978) (Where the court found that Plaintiffs complaint had to be dismissed where it appeared that, "That no degree of reformation will permit plaintiffs to state a cause of action for which relief could be granted.") If it is possible that the pleading can be cured by amendment, a court, "must give the pleader an opportunity to file an amended complaint... This is not a matter of discretion with the court but rather a positive duty." Framlau Corp. v. County of Delaware, 299 A.2d 335, 337 (Pa.Super.1972).

I. & II.

In its first two preliminary objections, Defendant objects on the basis of Pa.R.C.P. 1028(a)(2) for lack of conformity to law or rule of court. Defendant avers that the Plaintiff failed to attach the alleged written agreement setting forth specifically Defendant's obligations to Aspire Visa and also failed to attach the document evidencing the assignment of the Aspire Visa contract to Plaintiff Midland Funding LLC. Defendant avers that by neither attaching the documents, nor explaining the reason for their absence, Plaintiff violated the provisions of Pa.R.C.P. 1019(h) and (i), which require the attachment of the writing to the pleading. Plaintiff responds by stating that there is an exception to Pa.R.C.P. 1019(h) where the other side is a party to the writing and would have copies of it within its possession.

It is well settled Pennsylvania law that a complaint shall state the material facts on which a cause of action is based and where any claim is based upon an agreement, the complaint, shall state whether it was an oral or written agreement. Pa. R. Civ. P 1019 (a), (h). A party must attach a copy of the writing to the complaint, or state the reason for not attaching a copy of the writing and set forth the substance of the written agreement in their complaint. Pa. R. Civ. P. 1019 (i).

Pennsylvania Rule of Civil Procedure 1019(i) states, "When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof ..."

Pa.R.Civ.P. 1019(i). Exhibit A, attached to the Amended Complaint, does not satisfy Rule 1019(i) insofar as it is unclear what part of the alleged contract, has been attached. The Defendant's signature (to us, the most "material" part of the writing) is not shown. Likewise, the date of the alleged agreement is missing from the "writing." We will require that Plaintiff file an amended Complaint attaching a copy of the Agreement that is legible and shows both the signature of the Defendant and the date entered into.

Further, Pa.R.C.P. 2002 (a) requires that all actions be brought by the real party in interest. Thus, under Pa.R.C.P. 1019, an assignee who brings suit must attach a copy of the assignment with the complaint or state why the contract is not attached while pleading the contract with specificity. Atlantic Credit and Finance, Inc. v. Giuliana, 829 A. 2d 340 (Pa. Super., 2003). In Atlantic Credit, the Pennsylvania Superior Court (in order to determine whether to re-open a grant for default judgment, considered the preliminary objections filed by appellant) granted a preliminary objection for failure to attach a written contract of assignment as, "the failure to attach the writings which assertedly establish appellee's right to a judgment against appellants...based on an alleged debt it allegedly purchased...is fatal to the claims set forth in appellee's complaint." Atlantic Credit and Finance, Inc. v. Giuliana, 829 A.2d 340, 345 (Pa. Super., 2003).

In the instant case, the Amended Complaint demonstrates that there are monies due and owing on a credit card. However, by failing to state why such contract is unavailable, and by failing to describe the repayment obligations which Defendant has allegedly agreed to and in

what manner Defendant has violated any such obligations, Plaintiff has not met the requirements of Pa. R. Civ. P. 1019 (h) and (i).

Further, Plaintiff does not address its failure to attach the terms of the assignment from Aspire Visa to the Plaintiff. In Produce Factors Corp. v. Brown, 179 A.2d 919 (Pa. Super. 1962), the court specifically held that, "When suit is brought against the defendant by a stranger to his contract, he is entitled to proof that the plaintiff is the owner of the claim against him... Otherwise, the defendant might find himself subjected to the same liability to the original owner of the cause of action, in the event that there was no actual assignment." Id. at 921. In that case, the plaintiff had filed the original note as well as the original assignment of the note with their complaint. Id.

In this case, the Plaintiff's Amended Complaint and attached exhibits do not state whether or not the assignment of the claim from Aspire Visa to Plaintiff was written, nor does it contain an attached copy of the assignment, nor does it state a reason why a copy is not attached in order to plead the assignment with specificity. The Amended Complaint does not demonstrate that Defendant has entered into a contract with Plaintiff or that Plaintiff has any privity of contract with the Defendant by assignment or otherwise. However, the right to amend pleadings must be granted liberally where an amendment would cure the defective Complaint.

III.

Defendant also includes a preliminary objection for insufficient specificity in a pleading in accordance with Pa.R.C.P. 1028 (a)(3) for failing to provide adequate documentation for charges allegedly made by the Defendant. Plaintiff responds to this by stating that Plaintiff did attach a transaction history and the terms and conditions of the account as exhibits to the Amended Complaint.

In general, a plaintiff should be sufficiently clear and explicit in their complaint so that the defendant, to prepare his defense, may be informed of plaintiff's demand as the purpose of pleadings is to frame concisely definite and distinct issues for trial. Glick v. Peoples-Pittsburgh Trust Co., East End Branch, 7 A.2d 364, 365 (Pa.Super. 1939). The test of whether or not the complaint is sufficiently specific is whether the complaint reasonably informs the defendant of the facts they must prepare to defend at trial and informs the defendant of the specific basis on which recovery is sought so that they may know without question upon what grounds to make their defense. 4 Standard Pennsylvania Practice 2d § 21:42. A complaint may be insufficient where allegations of the cause of action are vague, concerned with broad generalities and contain no time, place or nature of event of situation against an answer may be required. Framlau Corp. v. Delaware County, 299 A.2d 335, 337 (Pa.Super. 1972). In determining whether a complaint is sufficiently specific, all averments of the complaint are considered together and appraised in light of the nature of the case. 4 Standard Pennsylvania Practice 2d § 21:42.

In the instant case, Defendant avers they are unable to form an appropriate answer where Plaintiff in their complaint provided only a generic statement of charges rather than actual account statements. Plaintiff responds that they have set forth the account number as well as the details set forth in the transaction history.

This Court has reviewed the Amended Complaint and all of its averments to determine whether it is in conformity with the law and sufficiently specific. As discussed above, Plaintiff is required to plead the repayment obligations and default by Defendant in the complaint (if they are unable to attach a copy of the written contract) and to attach a copy of the written assignment to demonstrate privity of contract with Defendant. Thus we find merit in the Defendant's preliminary objections.

However, the right to amend pleadings must be granted liberally where an amendment would cure the defective Complaint. And for all these reasons we enter the following:

ORDER

NOW this 11th day of January, 2008 it is ORDERED, DECREED and DIRECTED

as follows:

1. Defendant Snyder's Preliminary Objections I and II are sustained.
3. Plaintiff has 20 days to file a second amended complaint in accordance with this opinion.

BY THE COURT,

Herbert A. Carpenter III J.

