

IN THE COURT OF COMMON PLEAS OF BLAIR COUNTY, PENNSYLVANIA

CACH, LLC, :
Plaintiff :
 :
V : NO. 2007 GN 5427
 :
LESLIE MYERS, :
Defendant :

THE HON. JOLENE GRUBB KOPRIVA - PRESIDENT JUDGE

ALLAN C. SMITH, ESQ. - COUNSEL FOR PLAINTIFF

DIANA INGERSOLL, ESQ. - COUNSEL FOR DEFENDANT

FILED: _____

OPINION AND ORDER

I. PROCEDURAL / FACTUAL HISTORY:

The matter before this Court is Defendant Leslie Myers (hereinafter Defendant) Preliminary Objections to Plaintiff CACH (hereinafter Plaintiff) complaint.

Plaintiff filed their Complaint on October 2, 2007. Original service of process was carried out on May 21, 2008. Defendant filed preliminary objections on June 10, 2008 and a brief in support on June 30, 2008. Plaintiff filed a response on July 29, 2008.

Plaintiff alleges in its Complaint, Defendant ordered goods and/or services through a line of credit with an alleged account number. Plaintiff alleges the original creditor is Household Bank. Plaintiff alleges Defendant owes an amount of \$4,906.87 on such line of credit. Plaintiff further alleges the original creditor sold the debt to Plaintiff. Plaintiff attaches as Exhibit A, an Account summary from May 22, 2005, which states an account number, Defendants name and the name of Household Credit Services. Plaintiff attaches as Exhibit B a Certificate of Purchase, which states Plaintiffs authorized agent is the current owner of the account, which was purchased from Household Bank and cites Defendants name and alleged account number. Plaintiff attaches as Exhibit C a generic Card member Agreement from Household Bank, which does not have the names of Defendant or any alleged account number.

This Court now proceeds to disposition.

II. DISCUSSION

Defendant asserts this Court dismiss Plaintiffs Complaint for (A) failure to attach any written contract between the parties demonstrating the original credit arrangement and any subsequent assignment of such arrangement and (B) Plaintiffs complaint lacks sufficient specificity to allow Defendant to prepare a defense.

Preliminary objections which result in the dismissal of a cause of action should be sustained, only in cases that are [so] clear and free from doubt that the plaintiff will be unable to prove legally sufficient facts to establish any right to relief. All doubts in this determination should be resolved by overruling the preliminary objections. *Montanya v. McGonegal*, 757 A.2d 947, 950 (Pa.Super.,2000). 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[T]his 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).

We look at each issue in turn.

A.

Defendant asserts Plaintiff has failed to attach any sort of contract demonstrating an agreement between Defendant and Plaintiff or any form of assignment of debt agreement demonstrating how Plaintiff has standing to bring a lawsuit for the alleged debt incurred against Defendant.

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). In a claim seeking damages for breach of a credit card contract, this includes attaching the *underlying* contract between the issuer of the card and the card holder, as well as setting forth in the complaint the specific averments of time, place and damages which have risen as a result of non-payment in any credit card contract. *Marine Bank v. Orlando*, 25 Pa. D. & C.3d 264, 1982 WL 425 (Pa.Com.Pl. 1982).

Further, Pa. R. Civ. P. 2002 (a) requires that the real party in interest bring all actions. Thus, under Pa. R. Civ. P. 1019, an assignee that 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 assuredly 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, although Plaintiff has not set out a specific claim for damages, the facts outlined in the Complaint demonstrates a claim for breach of a credit card contract between Household Goods and Defendant. Plaintiff responds to the Preliminary objection that Defendant by using and/or authorizing the use of a credit card Defendant has accepted the contract with the Issuer and has become bound to pay for all charges incurred with the credit card.[1]

Pursuant to the relevant rules of Pennsylvania Civil Procedure and case law outlined above, Plaintiff must state whether the contract between Household Goods (the issuer of an alleged credit card) and Defendant is oral or written and if it is written attach a copy of such writing to the Complaint. However, Plaintiff merely attaches as Exhibit A, an account summary statement from 2005 allegedly for a credit card issued by Household Bank to Defendant. This is merely a final bill and does not demonstrate the *underlying* contract showing Defendant did indeed enter into a contract with Household Goods, for the issuance of the alleged credit card account. Plaintiff's Exhibit C suffers a similar defect, as it is merely a generic copy of terms and conditions without any indication it was actually signed and accepted as part of the contract between Defendant and Household Goods. In order to cure these defects, Plaintiff is required to attach to its Complaint a copy of the original contract (with the original agreed upon terms and conditions) signed and entered into by Defendant and Household Goods. If Plaintiff is unable to provide such copy, the rules do allow Plaintiff to simply state the reason for the defect and set forth the substance of any written contract.

Defendant further alleges Plaintiff has failed to attach any writing demonstrating the assignment of the alleged account from Household Bank to Plaintiff. Plaintiff has attached as Exhibit B a notarized document demonstrating Plaintiffs authorized agent purchasing the alleged account from Household Bank. Thus, we would consider the requirement of attaching the assignment contract to have been met. However, such assignment contract is to no avail where Plaintiff, as mentioned above, as failed to attach a copy of the original contract between Defendant and the original issuer of the credit card, Household Bank. Therefore, unless Plaintiff cures this defect, the attachment of the assignment contract does not assist Plaintiff in going forward with its claim for damages.

We will permit Plaintiff to amend its Complaint in accordance with this opinion as analyzed above.

B.

Defendant asserts Plaintiffs complaint lacks the requisite specificity and does not allow Defendant to prepare his defense.

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 plaintiffs 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, Plaintiffs complaint merely alleges an account number and amount owed as of 2005. As analyzed above, Plaintiff has failed to attach any written contract with terms and conditions between Defendant and Household Bank. Further, the complaint fails to state material facts such as when any such contract was entered into by Defendant, for what amount and what goods, the specifics of any such default and how the Plaintiff arrived at the alleged amount of in default. Thus, nothing in Plaintiffs complaint informs Defendant of necessary details for a claim in damages.

However, the right to amend pleadings must be granted liberally where an amendment would cure the defective complaint. Plaintiff will be allowed to amend its pleading in accordance with this opinion. And for all these reasons we enter the following,

ORDER

AND NOW this 6th of October 2008, it is ORDERED, DIRECTED and DECREED:

1. Defendants Motion to Dismiss Plaintiffs Complaint is hereby DENIED.
2. Plaintiff must amend the Complaint in accordance with this Opinion within twenty (20) days from the date of this Order or suffer dismissal of the Complaint with Prejudice.

BY THE COURT:

_____ P.J.

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[1] In support of this position, Plaintiff cites case law from Ohio, Delaware, New York and Texas. Unfortunately, this Court finds none of these cases relevant to the determination of the requirements of the Pennsylvania Rules of Civil Procedure.