

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

UNIFUND CCR PARTNERS
ASSIGNEE OF PALISADES
COLLECTIONS, LLC

V.

JENNY T. VO

:
:
:
:
:
:
:
:
:
:
:

APRIL TERM, 2008

NO. 3966

CONTROL NO. 08206576
080930

COPIES SENT
PURSUANT TO Pa.R.C.P. 236(b)

FEB 17 2009

FIRST JUDICIAL DISTRICT OF PA
USER I.D. *[Signature]*

OPINION AND ORDER

FOX, J.

This matter comes before the Court for disposition of Preliminary Objections to the Plaintiff's Third Amended Complaint.

DOCKETED
FEB 17 2009

PROCEDURAL HISTORY

T. DUGAN

Plaintiff, Unifund CCR Partners, assignee of Palisades Collections, LLC (hereinafter Plaintiff) initiated this action by filing a Complaint demanding \$14,237.78 plus interest, costs, and attorney's fees. Defendant Jenny T. Vo (hereinafter Defendant), filed Preliminary Objections to the complaint.

In response, Plaintiff filed an Amended Complaint demanding \$6,417.62 plus interest, costs, and attorney's fees. Thereafter Defendant again filed Preliminary Objections to the Amended Complaint. The Court sustained the Preliminary Objections and granted Plaintiff leave to file an amended complaint.

Unifund Ccr Partners Vs Vo-ORDER



08040396600033

Plaintiff filed a Second Amended Complaint, again demanding \$6,417.62 plus interest, costs, and attorney's fees. Defendant filed Preliminary Objections and in response Plaintiff filed a Third Amended Complaint demanding \$5,703.26 plus interest, costs, and attorney's fees. Defendant filed Preliminary Objections which are at issue herein. This court initially sustained the Objections and dismissed the Complaint without further leave to amend. Plaintiff filed for Reconsideration which this court granted, vacating its Order and scheduling the matter for oral arguments. The court heard arguments on December 3, 2008.

DISCUSSION

Pennsylvania is a fact-pleading jurisdiction. Pa.R.C.P. 1019(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." The purpose of Rule 1019(a) is to "require the pleader to disclose the 'material facts' sufficient to enable the adverse party to prepare his case." Landau v. Western Pennsylvania National Bank, 282 A.2d 335, 339 (Pa. 1971). A complaint "must not only give the defendant notice of what the plaintiffs' claim is and the grounds upon which it rests, but it must also formulate the issues by summarizing those facts essential to support the claim." Alpha Tau Omega Fraternity v. University of Pennsylvania, 464 A.2d 1349, 1352 (Pa. Super. 1983).

I. FAILURE TO PLEAD PRIVITY OF CONTRACT WITH THE ORIGINAL CREDITOR

The Plaintiff has failed to plead the chain of assignment of the Defendant's account from the alleged original creditor, Citibank (South Dakota) N.A., to the Plaintiff.

“Where the plaintiff relies upon a contract in which he or she has privity but to which he or she is not a direct party, the complaint is required to show how the privity of contract arose.” 4 *Standard Pennsylvania Practice 2d* § 22:10 at 124.

In its Third Amended Complaint, Plaintiff states that it is the “successor in interest to the original creditor as set forth in the caption of this Complaint.” The caption of the Complaint lists the Plaintiff as “Unifund CCR Partners assignee of Palisades Collection, LLC.” The Plaintiff also attaches three documents purporting to establish the chain of assignment of the defendant’s account:

- A “Bill of Sale, Assignment and Assumption Agreement” dated May 26, 2006 between Citibank (South Dakota) N.A. and Unifund Portfolio A, LLC which assigns “Accounts described in Section 1.2 of the Agreement.” Section 1.2 is not attached, nor is it averred in the Complaint that the Defendant’s account is included in Section 1.2.
- A “Bill of Sale” dated May 26, 2006 between Unifund Portfolio A, LLC and Cliffs Portfolio Acquisition I, LLC, which assigns the “Cliffs Subpool as defined in the Agreement.” There is no further description of the “Cliffs Subpool,” nor is it averred that the Defendant’s account is included in the Cliffs Subpool.
- An “Assignment” dated January 1, 2005 among Palisades Collection, LLC and Cliffs Portfolio Acquisition I, LLC as assignors and Unifund CCR Partners as assignee, which assigns “Receivables” to the assignee. There is no description of the Receivables, nor is it averred that the Defendant’s account is included in the Receivables.

Pa. R.C.P. 2002(a) requires actions to be prosecuted “by and in the name of the real party in interest.” Rule 2002(a) “requires the plaintiff to trace in his statement of claim the derivation of his cause of action from his assignor” so that the defendant “may challenge the plaintiff’s claim that he is the present owner of the cause of action.” Brown v. Esposito, 42 A.2d 93, 94 (Pa. Super. 1945).

Plaintiff contends that the three documents attached to the Complaint demonstrate the chain of title. However, none of the documents specifically mention the Defendant’s account as included among the accounts assigned. The Complaint does not plead the chain of assignment other than to state conclusorily that the Plaintiff is “successor in interest” to the original creditor. “When suit is brought against a defendant by a stranger to his contract, he is entitled to proof 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.” Produce Factors Corp. v. Brown, 179 A.2d 919, 921 (Pa. Super. 1962), *citing* Brown v. Esposito, 42 A.2d at 94.

Plaintiff’s failure to adequately plead the assignment of the Defendant’s account is a failure to plead material facts upon which the claim is based.

II. INSUFFICIENT SPECIFICITY IN A PLEADING – Pa. R.C.P. 1028(a)(3)

Plaintiff has alleged in four complaints that Defendant owes three different amounts, ranging from \$14,237.78 in its original Complaint to \$5,703.26 in its Third Amended Complaint. To support the amount owed, Plaintiff attached to the Third Amended Complaint what purports to be seven months of the Defendant’s credit card bills, May to

December 2004. The first statement shows a "previous balance" of \$5,738.33. The statements do not show any purchases or cash advances, but instead reflect only interest charges at rates ranging from 9.9% to 29.49%, and various fees such as a \$29 "returned check fee," a \$39 "bad check fee," and a \$39 late fee. The final balance on the December 3, 2004 statement is \$5,703.26.

Pa. R.C.P. 1019(f) states that "averments of time, place and items of special damage shall be specifically stated." This court concurs with the decision in Worldwide Asset Purchasing, LLC v. Stern, 153 P.L.J. 111 (C.P. Allegheny 2004), which held that in suits to recover credit card debts, under Rule 1019(f) the "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 items he must contest." Id. at 112.

Worldwide Asset Purchasing described the requirements to adequately plead and prove an account:

"An account must show the name of the party charged. It begins with a balance, preferably at zero, or with a sum recited that can qualify as an account stated, but at least the balance should be a provable sum. Following the balance the item or items, dated and identifiable by number or otherwise, representing charges, or debits, and credits, should appear. Summarization is necessary showing a running or developing balance or an arrangement which permits the calculation of the balance claimed to be due." Id., citing Asset Acceptance Corp. v. Proctor, 804 N.E.2d 975, 977 (Ohio Ct. App. 2004).

The Plaintiff does not plead any information in the Complaint to show the basis of Defendant's account prior to May 4, 2004. The Plaintiff contends that under the terms of the card member agreement, the Defendant has only 60 days to contest any charges to the account believed to be incorrect, and therefore the Defendant is estopped from contesting the validity of any charges more than 60 days old. If the Complaint does not state with

particularity the basis of the alleged amount owed, the Defendant is unable to adequately prepare a defense to the Plaintiff's case. The importance of this pleading requirement is illustrated by the procedural history of this case wherein the Plaintiff has changed the amount Defendant allegedly owes from \$14,237.78 in the original Complaint, \$6,417.62 in the Amended and Second Amended Complaints, and finally \$5,703.26 in the Third Amended Complaint.

The failure to plead sufficient information so that the Defendant can determine the basis of the alleged balance owed constitutes insufficient specificity in a pleading under Pa. R.C.P. 1028(a)(3).

III. FAILURE TO ATTACH A MATERIAL PART OF THE WRITING UPON WHICH THE CLAIM IS BASED – Pa. R.C.P. 1019(i)

Pa. R.C.P. 1019(i) states that “[w]hen 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.” The Plaintiff attaches a copy of a form contract entitled “AT&T Universal card member Agreement,” and avers in the Third Amended Complaint that upon information and belief, the Defendant “executed a written application for the credit card at issue on or about July 5, 2001.”

Although the Plaintiff has attached contract language governing an account, the Plaintiff has failed to plead or attach the interest rates and fees that the parties agreed to as part of the credit card agreement. Regulation Z, promulgated by the Federal Reserve under the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, requires that interest rates, fees, and finance charges applicable to a credit card account be disclosed in the credit card

application in a tabular format, commonly known as the "Schumer Box." See 12 C.F.R. § 226.5a; see also Roberts v. Fleet Bank, 342 F.3d 260, 265-266 (3d Cir. 2003) (describing the disclosure requirements of the Schumer Box).

The information contained in the Schumer Box is a material part of the writing upon which the Plaintiff's claim is based; it establishes the agreed-upon contract terms for the interest rates and fees. Without attaching the Schumer Box or setting forth its substance in the complaint, the Plaintiff does not adequately plead the basis for the amounts of interest, late fees, returned check fees, and over-the-limit fees alleged to be owed. The failure to either attach a copy of the original Schumer Box and any subsequent amendments, or to set forth the substance of the information contained in the Schumer Box in the complaint, constitutes a failure under Rule 1019(i) to attach a material part of the writing upon which the claim is based.

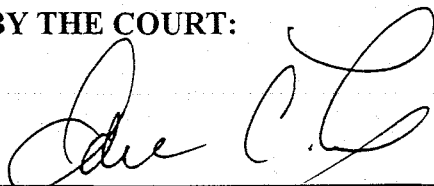
Finally, Defendant requests that the Court not only sustain the Preliminary Objections but also not allow the Plaintiff a fourth opportunity to amend the complaint. The issues raised by Defendant herein are the same as those raised in previous preliminary objections filled in this case. The Plaintiff has had more than ample opportunity to plead this case in accordance with the Rules of Civil Procedure. This Court agrees that further opportunity will prove fruitless and cause undue hardship on Defendant.

ORDER

AND NOW, this 17th day of February, 2009, it is hereby **ORDERED** and **DECREED** that Defendant's Preliminary Objections to Plaintiff's Third Amended

Complaint are **SUSTAINED**. The Complaint is dismissed without further leave to amend.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Idee C. Fox", written over a horizontal line.

IDE E C. FOX, J.