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DAUPHIN COUNTY
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ASSET ACCEPTANCE LLC, ASSIGNEE : IN THE COURT OF COMMON PLEASE
OF WORLD BANK FINANCIAL : DAUPHIN COUNTY, PENNSYLVANIA
NETWORK NATIONAL BANK, :
Plaintiff : No. 2010-CV-5754
:
vs. :
:
LINDA R. JONES, :
Defendant :

MEMORANDUM and ORDER

The issue before the court are Preliminary Objections to Plaintiff's Complaint filed on July 6, 2010. Plaintiff failed to file a response. Specifically, Defendant-Jones raises three objections to Plaintiff-Bank's Complaint: (1) that Plaintiff-Bank failed to attach a writing upon which its claim is based in violation of Pa. R.C.P. No. 1019(h) and (i); (2) that the Complaint was deficient because it did not contain allegations of sufficient specificity to permit Defendant-Jones to formulate a response as required by Pa. R.C.P. No. 1019(f); and (3) that Plaintiff-Bank is not a real party in interest in this case because Plaintiff failed to attach any documentation to the Complaint to prove it is an assignee of the original creditor as required by Pa. R.C.P. No. 2002.

Plaintiff-Bank filed a complaint on May 3, 2010 asserting that Defendant-Jones owes money on a credit card account for goods and/or services purchased. The Plaintiff-Bank failed to

attach a cardholder agreement or any other written contract evidencing that Defendant-Jones entered into a contractual relationship with Plaintiff-Bank or the alleged original creditor. Furthermore, the Plaintiff-Bank failed to attach a written contract indicating they are a lawful assignee of the original creditor, although Plaintiff-Bank does make representations to that effect in both the body of the Complaint and its caption. Lastly, Plaintiff-Bank failed to attach to the Complaint documentation evidencing purchases of goods or services, the prices for those goods or services, and credits for payments made.

A. Insufficient Specificity in a Pleading

1. Attachment of Agreements

Plaintiff-Bank failed to comply with Pa. R.C.P. Nos. 1019(h) and (i) because it failed to specifically state whether the agreement between Defendant-Jones and the original creditor was oral or written and because Plaintiff-Bank failed to attach a copy of the writing, or the material part thereof. Nor did the Plaintiff-Bank alternatively state the substance of the credit card agreement or offer an explanation for why the agreement is inaccessible.

Pa R.C.P. No. 1019(h) states: “[w]hen any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written.” Plaintiff-Bank’s complaint fails to “state specifically” whether the agreement to extend credit to Defendant-Jones by Plaintiff-Bank was oral or written.

Furthermore, Pa. R.C.P. No. 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.

Consequently, even if Plaintiff-Bank's Complaint specifically stated whether the agreement was oral or in writing as required by Pa. R.C.P. No. 1019(h), they still failed to set forth the terms of any oral argument or attach the respective writing to the Complaint if the agreement was in writing. Plaintiff-Bank did attach an affidavit to its Complaint as Exhibit A attesting to, among other things, Defendant-Jones's outstanding debt. However, this alone fails to comply with the requirements set forth in Pa. R.C.P. Nos. 1019(h) and (i). See Atl. Credit & Fin. Inc. v. Wylie, 124 Dauph. 163 (Pa. Ct. Com. Pl 2010) (holding that a creditor must attach the original cardholder agreement to the Complaint); See also Atlantic Credit & Finance, Inc. v. Giuliana, 829 A.2d 340, 345 (Pa. Super. 2003) (sustaining preliminary objections based on an alleged assignee's failure to attach written evidence of contract between the original creditor and the defendant); See also Feigley v. Dep't of Corrs., 872 A.2d 189 (Pa. Commw. Ct. 2005) (finding that where a plaintiff's claim was based on a writing, it should have been attached to her Complaint pursuant to Pa R.C.P. No. 1019(h)).

Therefore, Defendant-Jones's first Preliminary Objection is granted.

2. Averments of Time and Place

Pa. R.C.P. No. 1019(a) states that "[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form." Pa. R.C.P. No 1019(f) states that "averments of time, place and items of special damage shall be specifically stated." The pertinent question under Rule 1028(a)(3) is "whether the complaint is sufficiently clear to enable the defendant to prepare his defense," or "whether the plaintiff's complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense." Rambo v. Greene, 906 A.2d

1232, 1236 (Pa. Super. Ct. 2006); Local No. 163, Intern. Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America v. Watkins, 207 A.2d 776 (Pa. 1965); Stilp v. Commonwealth, 910 A.2d 775 (Pa. Commw. Ct. 2006); Paz v. Commonwealth, Dept. of Corrs., 580 A.2d 452 (Pa. Commw. Ct. 1990). Thus, the purpose of the rule is to require the pleader to disclose the material facts sufficient to enable the adverse party to prepare his or her case. Landau v. W. Pa. Nat. Bank, 445 Pa. 217, 282 A.2d 335 (1971); Smith v. Wagner, 588 A.2d 1308 (Pa. Super. Ct. 1991).

In Atlantic Credit & Fin., Inc. v. Wylie, an analogous case arising out of this court, Judge Turgeon expressly stated what a plaintiff who is attempting to recover credit card payments from a defendant is required to produce in their Complaint. That opinion required the following:

- (a) attaching the credit card contract or agreement, relevant terms and conditions of the purported agreement and any other relevant documents that would verify the existence of an alleged credit card contract;
- (b) sufficiently alleging the relevant dates during which the contract and any applicable terms and conditions applied to Defendant's contract;
- (c) setting forth the date(s) of Defendant's alleged default and what notice, if any, was given to Defendant concerning Defendant's alleged default prior to the commencement of suit;
- (d) including a current Statement of Account, itemizing principal balance, interest and/or any other alleged charges, including copies of monthly statements issued to Defendant throughout the entirety of the alleged agreement.

Plaintiff-Bank's Complaint failed to specify the time, place, and amount of each credit card transaction. Without such information Defendant-Jones is unable to prepare her defense. Without this information it cannot be said that the Complaint accurately and completely informs Defendant-Jones of the specific basis on which recovery is sought so that she may know without

question upon what grounds to make her defense. The Complaint is therefore deficient and lacking in specificity. Defendant-Jones's second Preliminary Objection is granted.

B. Lack of Capacity to Sue (Real Party in Interest)

Plaintiff-Bank alleges it is the assignee of an account originally owned by World Financial Network National Bank. Pa. R.C.P. No. 2002 allows for actions brought by subrogees; however, where Plaintiff's claim is based upon an assignment of account from a creditor or other predecessor in interest, a copy of the written assignment must be attached to the Complaint. Pa. R.C.P. No. 1019(h) and (i); Atl. Credit & Fin., Inc. v. Giuliana, 829 A.2d 340, 345 (Pa. Super. 2003) (sustaining preliminary objections based on the plaintiff's failure to attach written evidence of the existence of a contract between the original creditor and the defendant or any assignment from the original creditor to the plaintiff); See also, 18 Pa. C.S. 7311 (mandating that all interests assigned to a collection agency be in writing).

Plaintiff-Bank only attaches an affidavit of an Asset Acceptance Representative employed by Plaintiff-Bank. In the affidavit the affiant attests that Plaintiff-Bank is the lawful assignee of the account in question; however, that document does not conform to the requirements of Pa. R.C.P. No. 1019(h) and (i) because Plaintiff-Bank failed to attach a the written contract of assignment to the Complaint evidencing their right to bring suit as a real party in interest. Defendant-Jones's third and final objection is granted.

The remedy to be requested by such preliminary objection is to have the court order a more specific complaint. Pelesky v. Larsen, 70 Pa. D. & C.2d 784 (Pa. Ct. Com. Pl. 1975).

Accordingly, we enter the following:

ORDER

AND NOW this 10th day of June, 2011, upon consideration of the Preliminary Objections to Plaintiff's Complaint filed on May 3, 2010, IT IS HEREBY ORDERED that Defendant-Jones's preliminary objections are GRANTED. Plaintiff-Bank is hereby ORDERED to file, within thirty (30) days from the date of this order, an Amended Complaint which includes the following:

(a) attaching the credit card contract or agreement, relevant terms and conditions of the purported agreement and any other relevant documents that would verify the existence of an alleged credit card contract;

(b) sufficiently alleging the relevant dates during which the contract and any applicable terms and conditions applied to Defendant's contract;

(c) setting forth the date of Defendant's alleged default and what notice, if any, was given to Defendant concerning Defendant's alleged default prior to the commencement of suit;

(d) including a current Statement of Account, itemizing principal balance, interest and/or any other alleged charges, including copies of monthly statements issued to Defendant throughout the entirety of the alleged agreement; AND

Plaintiff-Bank is hereby ORDERED to file, within thirty (30) days from the date of this order, an Amended Complaint with a copy of Plaintiff-Bank's contractual agreement assigning them rights in interest to Defendant-Jones's credit liability.

BY THE COURT:



ANDREW H. DOWLING
Judge

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Deborah S. Freeman, Esquire, Deputy Court Administrator - Civil

JUN 10 2011

I hereby certify that the foregoing is a true and correct copy of the original filed.



Stephen D. Davina
Prothonotary