

**North Star Capital Acquisition, LLC v.  
Dina M. Smith**

*Contract*

No. AR-07-000450. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.  
Wettick, Jr., J.—July 21, 2011.

**OPINION AND ORDER OF COURT**

Defendant's petition to strike and/or open judgment is the subject matter of this Opinion and Order of Court.

On January 19, 2007, North Star Capital Acquisition, LLC ("North Star") brought a breach of contract claim against defendant based on allegations that \$1,633.90 was due.

The complaint alleged that at the request of defendant, plaintiff sold and delivered to defendant goods and services as set forth in Exhibit A. Exhibit A is a Statement of Account listing only the balance due on an account in which Wells Fargo Financial was the original creditor.

On October 9, 2007, a default judgment was entered for failure to respond to the complaint.

On June 9, 2011, defendant filed the petition seeking to open and/or strike this default judgment that is the subject of this Opinion and Order of Court. In Count I, defendant seeks to open the judgment on the ground that the complaint failed to meet the specificity requirements of Pa.R.C.P. No. 1019(a).<sup>1</sup> However, the failure to comply with the pleading requirements of the Pennsylvania Rules of Civil Procedure is not a ground for opening a judgment. Insufficient specificity is a defense that is waived, if not raised through preliminary objection. See Pa.R.C.P. No. 1032.

In Count II, defendant seeks to strike the judgment. Defendant contends that her petition to strike is governed by *Wells Fargo Bank, N.A. v. Lupori*, 8 A.3d 919 (Pa. Super. 2010).

In that case, Wells Fargo filed a complaint in mortgage foreclosure on April 5, 2007 and the Prothonotary issued a default judgment against the Luporis on June 26, 2007 for failure to file a responsive pleading. On March 10, 2009, the Luporis sought to strike the judgment on the ground that the complaint did not allege that Wells Fargo was the owner of the Luporis' mortgage. The complaint described an assignment from First Franklin, a division of National City Bank, to First Franklin Financial Corporation, but made no mention of any other assignment. The Court held that the trial court erred in declining to strike the default judgment because of the complaint's failure to allege that Wells Fargo was the owner of the Luporis' mortgage.

The Court distinguished its Opinion in *U.S. Bank, N.A. v. Mallory*, 982 A.2d 986 (Pa. Super. 2009), on the ground that in *Mallory* the bank alleged that it was the owner of the subject mortgage and also alleged the existence of a pending assignment of the mortgage to the bank. "In contrast, Wells Fargo has failed to do either of these things." *Lupori*, 8 A.3d at 922.

The complaint in the present case has the same omission. It alleges only that the original creditor is Wells Fargo Financial. It makes no mention of any assignment from Wells Fargo Financial.

For these reasons, I enter the following Order of Court:

**ORDER OF COURT**

On this 21st day of July, 2011, it is hereby ORDERED that defendant's petition to strike is granted and the default judgment entered in these proceedings is stricken.

BY THE COURT:  
/s/Wettick, J.

<sup>1</sup> North Star's complaint did not meet the pleading requirements of Rule 1019 that the complaint include the amounts of the charges that are part of the claim, the dates of the charges, credits for payments, and the dates and amounts of interest charges and any other charges. In other words, the complaint should contain sufficient documentation and allegations to permit a defendant to calculate the total amount of damages that are allegedly due by reading the documents attached to the complaint and the allegations within the complaint. *Atlantic Credit and Finance, Inc. v. Giuliana*, 829 A.2d 340 (Pa. Super. 2003); *Capital One Bank (USA) NA v. Clevestine*, 7 D. & C. 5th 153 (C. P. Centre 2009); *Worldwide Asset Purchasing, LLC v. Stern*, 153 P.L.J. 111 (C.P. Allegheny 2004). The complaint filed in the present case provides no information that would permit defendant to calculate the amount of money sought.

**Barrel of Monkeys, LLC, d/b/a Harris Grill; et al. v.  
Allegheny County**

*Allegheny County Drink Tax—Constitutionality—Uniformity—Equal Protection—  
Conflict of Interest in Ordinance Vote—Statutory Construction*

No. GD 07-027730. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.  
O'Brien, A.J.

**OPINION**

On December 4, 2007, Allegheny County Council passed Ordinance No. 54-07-OR/3548-07, which imposed a tax of ten per cent on retail sales of alcoholic beverages<sup>1</sup> to benefit public transportation.<sup>2</sup> The ordinance has become known as the "Allegheny County Drink Tax." Plaintiffs' complaint seeks to invalidate the tax. In the following verbatim quote from ¶ 1 of their complaint, plaintiffs argued this ordinance:

- rests solely on Pennsylvania Act 44 of 2007, an act that violates the Pennsylvania Constitution's "single-subject" rule, Pa. Const. Art. III, § 3;
- violates the Pennsylvania Constitution's "uniformity" clause, Pa. Const. Art. VIII, § 1 and the United States Constitution's Equal Protection Clause, U.S. Const. [A]mend. XIV, § 1.; and