

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

CITIBANK, N.A., :
 :
 Plaintiff :
 :
 vs. : **No. 13-0704**
 :
 GEORGE T. MAHLER, :
 :
 Defendant :

Neil Sarker, Esquire Counsel for Plaintiff
Brit J. Suttell, Esquire Counsel for Plaintiff
Robert D. Klingensmith, Esquire Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - December , 2013

Before the Court are preliminary objections filed by George T. Mahler, (hereinafter "Defendant"), in response to a complaint filed by Citibank, N.A., (hereinafter "Plaintiff"), in a credit card default action. Defendant, in his motion, raises two objections to Plaintiff's complaint: 1) improper verification, a violation of Pennsylvania Rule of Civil Procedure 1024; and 2) failure to attach to the complaint the writing that forms the basis of the agreement between the parties and the monthly statements illustrating the damages Plaintiff claims it is owed as a result of Defendant's alleged default, both of which Defendant argues are required by Pennsylvania Rule of Civil

Procedure 1019. For the reasons stated within this Memorandum Opinion, Defendant's preliminary objections are **DENIED**.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff instituted this credit card default action on April 19, 2013, by filing a complaint. In the complaint, Plaintiff alleges that Citibank (South Dakota), N.A. granted Defendant a line of credit by means of a Sears credit card account, (hereinafter "Account"), with Account ending in 5268. Around July 2011, Citibank (South Dakota), N.A. merged with and into Plaintiff. Additionally, Plaintiff avers that it maintained accurate records of all debts and credits of the Account and presented Defendant with monthly statements of the Account.

Moreover, Plaintiff states that the monthly statements accurately reflected the previous month's balance along with all debits and credits to the Account for the prior billing period. Plaintiff also claims that Defendant received these monthly statements and either made a payment on the Account or retained the monthly billing statement without making such payment or alternatively, did not refute the balance claimed. As a result, Plaintiff argues that Defendant, by way of his conduct as just outlined, manifested his assent to the outstanding balance of the Account.

Lastly, Plaintiff attached to the complaint a single monthly statement with a payment date of January 18, 2013, reflecting an outstanding balance of \$3,128.65. Plaintiff asserts that it is this monthly statement that Defendant assented to and thus this statement is the agreement between the parties.

Defendant, in reply, filed preliminary objections that are the subject of this opinion. In these objections Defendant claims Plaintiff has violated Pennsylvania Rules of Civil Procedure 1019 and 1024. Although Defendant's motion lists only two preliminary objections, in actuality Defendant asserts three objections, with two of these objections being for violations of Rule 1019. More specifically, Defendant claims Plaintiff violated the Pennsylvania Rules of Civil Procedure by submitting an improper verification, and not attaching the necessary documentation to the complaint, specifically a cardholder agreement and numerous monthly statements, alleged violations of Pennsylvania Rules of Civil Procedure 1024, and 1019 (f) and (i) respectively. Defendant proclaims such documentation is necessary in order for him to prepare a proper defense.

This matter having been submitted to the Court on briefs, the Court will now render judgment on Defendant's preliminary objections.

DISCUSSION

In accordance with Pennsylvania Rule of Civil Procedure 1028, any party may file preliminary objections to any pleading for "failure of a pleading to conform to law or rule of court" or for "insufficient specificity in a pleading." Pa.R.C.P. 1028(a)(2), (3). A court, when deliberating upon preliminary objections, must accept all material facts set forth in the challenged pleading as true. *Turner v. Medical Center, Beaver, PA, Inc.*, 686 A.2d 830 (Pa. Super. Ct. 1996).

I. Improper Verification

Defendant's first preliminary objection asserts that Plaintiff has violated Pennsylvania Rule of Civil Procedure 1024 by attaching a verification to that complaint that is undated, and the signer of the verification describes herself as an "employee" of Plaintiff without any specific job title.

The purpose of a verification is to establish that the party or a representative on behalf of the party has read the pleading and attests to its truthfulness. As stated by the Superior Court, a pleading without a verification is a mere narration and amounts to nothing. *Atlantic Credit and Finance, Inc. v. Giuliana*, 829 A.2d 340, 344 (Pa. Super. Ct. 2003) (citing 2 Goodrich Amram 2d § 1024(a):1). A verification is necessary to defend a party against spurious allegations; however, it must

not be transformed into an offensive weapon designed to strike down an otherwise valid pleading. *George H. Althof, Inc. v. Spartan Inns of America, Inc.*, 441 A.2d 1236 (Pa. Super. Ct. 1982).

In challenging the verification, Defendant asserts that because Ashley Cooley's job title is that of "employee", her verification of the complaint is improper insofar as there is no information within the complaint that correlates Ms. Cooley with the Plaintiff. Without such information, Defendant contends he is unable to verify the legitimacy of Plaintiff's claim. In support of such argument, Defendant submitted an opinion from the Court of Common Pleas in Centre County authored by the Honorable Judge Bradley P. Lunsford.¹

Pennsylvania Rule of Civil Procedure 1024 states in pertinent part:

(a) Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer's personal knowledge or information and belief and shall be verified. The signer need not aver the source of the information or expectation of ability to prove he averment or denial

¹ The Court notes that such authority is not binding on this Court and can only be offered by Defendant as persuasive authority. In this opinion, Honorable Judge Bradley P. Lunsford granted defendant's preliminary objection on the grounds that the verification was inadequate for failure to establish the signer's employment with plaintiff and the basis for her knowledge of the facts averred in the complaint.

This Court finds no authority or requirement that a plaintiff need to specify his or her employment with plaintiff in order for the verification to be proper. Additionally, Pennsylvania Rule of Civil Procedure 1024 states that "[t]he signer need not aver the source of the information." Accordingly, this Court is unwilling to follow the holding of Judge Lunsford.

at the trial. A Pleading may be verified upon personal knowledge as to a part and upon information and belief as to the remainder.

(c) The verification shall be made by one or more of the parties filing the pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading. In such cases, the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of the person's information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by a party.

Pa.R.C.P. 1024. Additionally, the term "verified" when used in reference to a written statement of fact by a signer, means supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S.A. § 4904. See, Pa.R.C.P. 76.

In examining the rule, this Court finds that in order for the verification to be proper, it need only be signed by a person with personal knowledge as to the truthfulness of the averments. The rule does not require the signer of the verification to state how or why she is authorized to make such verification, nor does the verification need to state the source of such knowledge.

Consequently, the Court sees no credence in Defendant's argument that he will be unable to verify the legitimacy of Plaintiff's claim without further clarification of the job title

of Ashley Cooley being referenced in the verification or the complaint. Such information can be ascertained through certain discovery mechanisms.

Defendant's other objection to the verification submitted by Plaintiff is that the verification is undated. Although such claim is true, the Pennsylvania Rules of Civil Procedure do not mandate that the verification must be dated in order to be valid.²

II. Insufficient Specificity

Defendant's second preliminary objection, an objection based upon a lack of specificity, is twofold. First, Defendant argues that Plaintiff's complaint lacks specificity insofar as the complaint does not include the writing that Plaintiff's cause of action is based upon, and therefore violates Pennsylvania Rule of Civil Procedure 1019(i); and second, that Plaintiff has failed to attach multiple statements to the complaint setting forth the "time, place and items of special damages" Plaintiff claims it is entitled to. See, Pa.R.C.P. 1019(f). Since these objections involve different legal principles, the Court will address these two objections

² Defendant also claims that the signature of Ashley Cooley, the employee who signed the verification, is a computer generated signature. However, only the printed name of "Ashley Cooley" stating that she is employed by Plaintiff is computer-printed. The actual signature of Ashley Cooley appears to be handwritten thus making the signature valid.

separately beginning with the alleged violation for failure to attach the writing.

A complaint is deemed to lack specificity where the pleading does not attach a copy of the writing referred to in the complaint. Pa.R.C.P. 1019(i); *Goldman v. Schlanger*, 49 Pa. D. & C.2d 225 (C.P. Pike 1970).

Plaintiff's sole cause of action asserted against Defendant is a credit card default action based upon the legal theory of an account stated. An "account stated" has been defined by the Pennsylvania Supreme Court as "an account in writing examined and accepted by both parties. And this acceptance need not be express, but may be implied from circumstances." *Leinbach v. Wolle*, 61 A. 248 (Pa. 1905). A party may manifest his or her assent to an account stated if that party is in receipt of the statement for an unreasonable amount of time without objection to the balance shown on the statement. *Toland v. Sprague*, 37 U.S. 300, 301 (1838) ("[t]he mere rendering an account does not make it a stated account; but if the other party receives it, admits the correctness of the items, claims the balance, or offers to pay it . . . then it becomes a stated account."); see also, *Donahue v. City of Philadelphia*, 41 A.2d 879 (Pa. Super. Ct. 1945). The effect of an account stated is that the "amount or balance so agreed upon constitutes a new and independent cause of action, superseding and merging the antecedent causes

of action represented by the particular items." *Telebase Systems, Inc. v. Gateway Communications, Inc.*, 1988 WL 21845 (E.D. Pa. 1988).

Accordingly, a credit card default action based upon the legal theory of an account stated is not derived from a breach of the cardholder agreement in the same fashion as a cause of action brought under a breach of contract theory would be. The essence of an account stated is that the statement or statements, in conjunction with the debtor's acquiescence thereto, establishes that the debtor is in agreement with the accuracy of the account. RESTATEMENT (SECOND) OF CONTRACTS § 282 (1981). The legal theory behind an account stated cause of action is that the creditor's and debtor's conduct implies a contract between them with the evidence of the debt owed to the creditor represented by a monthly statement. It is debtor's actions, or failure to act, that manifests his or her assent to the outstanding balance depicted on the monthly statement. See, *David v. Veitscher Magnesitwerke Actien Gesellschaft*, 35 A.2d 346 (Pa. 1944).

Consequently, Plaintiff need not attach the cardholder agreement between itself and Defendant since Plaintiff's cause of action is not based upon that expressed agreement, but rather on the parties' course of conduct and Defendant's assent to the balance owed on the monthly statement. See, *Citibank, N.A. v.*

Peterson, No. 13-1496 (C.P. Lawrence 2013) (the Court concluded that plaintiff presented an account stated complaint and was not required to submit the cardholder agreement to establish its right to a judgment.) It is Defendant's assent to the accuracy of the outstanding balance shown on the monthly statement provided by Plaintiff, and Defendant's failure to pay said balance, or object to the balance, that forms the contract that is at issue in this matter, not the original cardholder agreement. Accordingly, Defendant's preliminary objection that Plaintiff failed to attach the writing that formed the basis of the agreement between the parties, namely the cardholder agreement, is denied.

Defendant's other preliminary objection to Plaintiff's complaint for lack of specificity is founded upon Plaintiff only attaching one monthly statement to the complaint, more specifically the January 2013 billing statement showing a three thousand one hundred twenty-eight dollars and sixty-five cents (\$3,128.65) balance due and owing on the Account. Defendant contends that only attaching one monthly statement violates Pennsylvania Rule of Civil Procedure 1019(f) and thus prevents him from properly defending himself in this action.

The pertinent question in evaluating a preliminary objection in an account stated cause of action based upon insufficient specificity is whether the complaint is

sufficiently clear to enable a defendant to prepare his or her defense, or whether plaintiff's complaint provides defendant with accuracy and completeness of the specific basis on which recovery is sought so that a defendant knows without question upon what grounds to make his or her defense. *Ammlung v. City of Chester*, 302 A.2d 491, 498 n.36 (Pa. Super. Ct. 1973) (citation omitted). A preliminary objection in the form of a motion for a more specific pleading raises the sole question of whether the pleading is sufficiently clear to enable a defendant to prepare a defense. *Unified Sportsmen of Pennsylvania v. Pennsylvania Game Commission (PGC)*, 950 A.2d 1120, 1134 (Pa. Cmwlth. Ct. 2008).

Since the pleading requirements for an account stated cause of action are contextual, and the appellate courts have provided no guidance on the matter, the various Courts of Common Pleas throughout the Commonwealth have been inconsistent in terms of the number of monthly statements a plaintiff must attach to the complaint in order to plead a proper account stated cause of action. See, *Citibank (South Dakota) N.A. v. Ambrose*, 13 Pa. D. & C. 5th 402 (C.P. Adams 2010) (Court found that attaching a copy of a recent statement was proper); *Citibank (South Dakota) N.A. v. King*, 2 Pa. D. & C. 5th 60 (C.P. Centre 2007); but see, *Citibank (South Dakota) N.A., Bank v. Ananiev*, 13 Pa. D. & C. 5th 557 (C.P. Monroe 2010) (Court ruled that plaintiff's

complaint lacked the specificity necessary by only attaching one monthly statement to the complaint.)

As stated above, an account stated cause of action is based on the theory that defendant's conduct, whether that would be an outward expression or silence, manifests an assent to the outstanding balance stated on the monthly statement that the plaintiff claims is due on the account. Consequently, under such theory each new monthly billing statement that Plaintiff claims Defendant assented to would incorporate and merge the previous month's balance and render such previous statement obsolete. In this case, Plaintiff's claim is based upon the most recent statement and not any previous month's billing statements.³ As stated by the Honorable Judge Kistler of Centre County, who was confronted with a similar issue, "[t]here is no requirement of law that plaintiff must attach each and every statement to a complaint," but rather the complaint must place defendant on notice of what plaintiff intends to prove at trial in order for defendant to adequately prepare to rebut such evidence at trial. *American Express Centurion v. Decker*, 9 Pa. D. & C. 5th 299, 306 (C.P. Centre 2009) (citing *Weiss v. Equibank*, 460 A.2d 271, 274-75 (Pa. Super. Ct. 1983)).

³ By most recent statement the Court does not mean the "charge-off" statement, but rather the statement reflecting the balance Plaintiff claims is due and owing on the Account.

This Court does not find any credibility in Defendant's argument that it is necessary to attach numerous monthly statements to the complaint in order for him to formulate a proper defense in this matter at this early stage in the litigation. Although the Court would agree that a multitude of monthly statements may be necessary for Plaintiff to ultimately succeed at trial on its assertion that Defendant assented to the outstanding balance claimed, such is not necessary in the pleading stage. The Pennsylvania Rules of Civil Procedure do not demand a higher pleading standard for credit card default actions, and as such this Court will not impose a heightened pleading standard upon Plaintiff. Therefore, the Court denies Defendant's preliminary objections and enters the following order:

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ORDER OF COURT

AND NOW, this _____ day of December, 2013, upon consideration the PRELIMINARY OBJECTIONS of Defendant, George T. Mahler, the brief in support thereof, and Plaintiff's response thereto, it is hereby

ORDERED and DECREED that Defendant's Preliminary Objections to Plaintiff's Complaint are **DENIED** and **DISMISSED**.

It is further **ORDERED and DECREED** that the Defendant shall file an Answer to Plaintiff's Complaint within twenty (20) days from the date of this Court Order.

BY THE COURT:

Joseph J. Matika, J.