

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW**

CAPITAL ONE BANK (USA),	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 11-2723
	:	
DAVID K. QUINN,	:	
	:	
Defendant	:	
Michael F. Ratchford, Esquire		Counsel for Plaintiff
Anthony Roberti, Esquire		Counsel for Plaintiff
David K. Quinn		Unrepresented

MEMORANDUM OPINION

Matika, J. - April 2012

Before the Court are Defendant's Preliminary Objections to Plaintiff's complaint. These preliminary objections consist of a "Motion to Strike/Motion for a More Specific Pleading" and a "Demurrer" regarding allegations that the defendant has defaulted on his credit card payment obligations on a credit card issued by the Plaintiff. For the reasons that follow, Defendant's preliminary objections are GRANTED IN PART and DENIED IN PART.

I. FACTUAL and PROCEDURAL BACKGROUND

Defendant, David K. Quinn, is alleged to have applied for and received a credit card issued by Plaintiff, Capital One Bank (USA). The terms and conditions for the use of the credit card were stated in a Card Member Agreement that Plaintiff attached to the

complaint, which was purportedly sent to Plaintiff along with the credit card.¹ Defendant is alleged to have defaulted on this account by not making his monthly payments and thus Plaintiff instituted this action to recover the unpaid balance on the account. The only document Plaintiff attached to the complaint in support of its claim is the aforementioned Card Member Agreement. There are no averments in the complaint that the attached Card Member Agreement is the original agreement between the two parties.

In response to the complaint, Defendant filed three (3) preliminary objections asking the Court to dismiss the complaint or in the alternative, strike the complaint.² Defendant's three preliminary objections can be combined into one concise objection in that Plaintiff's complaint fails to conform to the requirements of a complaint as required by Rule 1019 of the Pennsylvania Rules of Civil Procedure.

II. DISCUSSION

The Pennsylvania Rules of Civil Procedure provides general requirements of what a complaint must contain. Rule 1019(a) states

¹ It should be noted that the complaint does not indicate when the credit card account was opened; however, the Card Member Agreement is has a copyright date of 2010.

² Defendants argues three (3) points in his preliminary objections: (a) Plaintiff failed to attach to (sic) complaint verification of debt; (b) failed to plead any particulars with the alleged debt from (sic) and has failed to attach a copy of the account applications; (c)the complaint lacked specificity by failing to include information such as date or time period, credits, payments, amounts of interest or other charges, and failed to attach a "statement of account." All three (3) points are related and will be dealt with together.

a complaint must be comprised of "material facts [upon] which a cause of action or defense is based." The courts have interpreted this rule to mean that a complaint needs to inform the defendant of the nature and extent of the plaintiff's claim thereby giving the defendant notice of what plaintiff intends to prove at trial and allowing the defendant to prepare accordingly to meet such proof with his own evidence. *Weiss v. Equibank*, 313 Pa. Super 446, 453, 460 A.2d 271 274-75 (1983). However, a plaintiff need not divulge the legal theory underlying his complaint. *DelConte v. Stefonick*, 268 Pa. Super. 572 408 A.2d 1151 (1979).

In a credit card default case, the underlying agreement between the parties is one based on writings. Under the Pennsylvania Rules of Civil Procedure, "[w]hen any claim . . . is based upon a writing, the pleader shall attach a copy of the writing, 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." Pa.R.C.P. 1019(i). Therefore, in a credit card default case, the pleader must attach to the complaint the original card member agreement or state why the original agreement is not accessible. *Atlantic Credit and Finance, Inc. v. Giuliana*, 2003 Pa. Super. 259, 829 A.2d 340, 345 (2003). A generic card member agreement that bears a copyright date of any year other than the year plaintiff and defendant entered into such agreement is deemed insufficient to meet the requirements set forth by Rule 1019(i). However, it is not

necessary for the creditor to attach a signed card member agreement. *Discover Bank v. Stucka*, 33 A.3d 82, 87-88 (Pa. Super. 2011).

Another issue raised by the Defendant in his preliminary objections is that involving whether or not the complaint should include the credit card statements themselves and if so, how much information and how many of them need to be provided. Based on various holdings of other courts, the Courts have been struggling with whether monthly credit card statements are required, and if so, how many statements a creditor must attach to the complaint in order to provide the defendant with reasonable notice of what it intends to prove at trial. It is absolutely certain to this Court that monthly statements are essential to allow a defendant sufficient notice of the basis of the creditor's claim. The more difficult question is how many statements the creditor must attach to the complaint to provide reasonable notice to the defendant regarding the claim.

Since no higher court has set forth a standard, different Courts of Common Pleas have required varying numbers of statements to be attached to the complaint. Some courts have required that all monthly statements be attached to the complaint, see, e.g., *Remit Corporation v. Miller*, 5 Pa. D. & C. 5th 43 (Pa. Com. Pl. 2008), while other courts have only required several monthly statements. See, e.g., *Capital One Bank (USA) Na v. Clevestine*, 7 Pa. D. & C. 5th 153 (Pa. Com. Pl. 2009). The different standard

between the courts have not only lead to confusion among potential plaintiffs, but also to other courts trying to apply the standard set before it.

A complaint has two purposes: first, to state the plaintiff's cause of action, and secondly, to inform the defendant of the nature of plaintiff's claim, thereby allowing the defendant to prepare an adequate defense. *Varner v. Roberts*, 47 Pa. D. & C.3d 118, 120 (Pa. Com. Pl. 1988). Although the purpose of a complaint is not to necessarily reveal to the defendant every underlying fact upon which an action may be based, the complaint must still set forth enough material facts to establish a cause of action and "enable the defendant to know the nature of his alleged wrongdoing so that he may prepare a defense." *General State Authority v. Lawrie & Green*, 415 A.2d 851, 856 (Pa. Commw. 1976).

In evaluating the nature of a credit card default case, and the function a complaint is to serve, this Court finds it appropriate to require a plaintiff to attach all monthly statements bearing defendant's name with the complaint. The reason why this Court requires all monthly statements attached to the complaint is because a defendant needs this information in two respects: first, to be able to fully and accurately answer the complaint, second, to make any necessary counterclaims or defenses, and to avoid unnecessary discovery.

Furthermore, "a 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 he must contest." *Remit Corporation v. Miller*, 5 Pa. D. C.5th 43, 48 (Pa. Com. Pl. 2008). Thus, a plaintiff in a credit card default case must attach the monthly statement showing Defendant's balance at zero dollars and all subsequent monthly statements showing plaintiff is entitled to the balance on the defaulted account.³

In the case before this court, Plaintiff has not attached a single monthly credit card statement. In applying the standard just set forth above, this Court is left with no choice but to require such documents. Without the monthly statements, Defendant is left in a position that renders him unable to admit, deny, or state an adequate defense to the cause of action stated against him, in whole or in part. Thus we grant Defendant's preliminary objection that the complaint lacks the specificity that Rule 1019 of the Pennsylvania Rules of Civil Procedure requires.

Additionally, Defendant files an objection to the complaint is in the nature of a demurrer, contending that the complaint is

³ A complaint of this nature sets forth only a certain dollar amount yet that claim includes alleged purchases, credit for payments, charges for interest, late fees and the like. A defendant must have the ability to challenge each and every aspect of the claim and the only way to do so is by providing copies of all statements reflecting these items.

procedurally defective and thus should be dismissed. In determining whether a demurrer should be sustained and the complaint dismissed, the question the court must ask is whether, on the facts averred, the law says with certainty that no recovery is possible. *King v. U.S. Steel Corporation*, 247 A.2d 563 (Pa. 1968). When considering the demurrer, the court must take every well-pleaded material fact set forth in the complaint, as well as all inferences reasonably deducible therefrom as admitted. *Mistick v. Cammack*, 154 A.2d 588 (Pa. 1959). However, a demurrer does not admit the pleader's conclusions of law. *Hoffman v. Misericordia Hospital of Philadelphia*, 267 A.2d 867 (Pa. 1970). If there is any doubt as to whether the demurrer should be sustained, such doubt should be resolved in favor of denying the demurrer. *Id.*

In examining Plaintiff's complaint in the context of a demurrer, there are enough facts averred that establish that if all facts are true, Plaintiff would be entitled to recovery. Therefore, Defendant's preliminary objection in the nature of a demurrer is denied. Accordingly, the following order is entered: