

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW**

CITIBANK (SOUTH DAKOTA), N.A.,)	NO. C-48-CV-2011-610
)	
Plaintiff,)	
)	
v.)	
)	
NANCY PROCTOR-BROWN,)	
)	
Defendant.)	

ORDER OF COURT

AND NOW, this 13th day of May, 2011, upon due consideration of Defendant's Preliminary Objections to the Complaint, and the responses thereto, it is hereby **ORDERED** that Defendant's Preliminary Objections are **OVERRULED**.

Defendant is directed to file an answer within twenty (20) days of the date of this order.

STATEMENT OF REASONS

Factual and Procedural History

Plaintiff, Citibank (South Dakota), N.A., filed a complaint on January 20, 2011, seeking to collect an allegedly outstanding credit card debt from Defendant, Nancy Proctor-Brown. Plaintiff alleges it furnished Defendant a Home Depot credit card on which Defendant accumulated a debt totaling \$6,128.75. The complaint further alleges that Plaintiff kept an accurate running account of all credits and debits, it mailed monthly statements to Defendant and for many months Defendant either made payments on the account or retained the monthly statement without making a payment. Attached to the complaint is what appears to be a monthly

statement of Defendant's account indicating Defendant owed \$6,128.75 on the credit card account as of the November 19, 2010 closing date.

Defendant filed preliminary objections to Plaintiff's complaint on February 14, 2011, and Plaintiff filed a response on March 4, 2011. Both parties filed briefs and the matter was submitted on brief at the April 5, 2011 Argument List.

Legal Standard

In ruling on preliminary objections in the nature of a demurrer, the trial court may consider no testimony or evidence outside of the complaint. Mellon Bank, N.A. v. Fabinyi, 650 A.2d 895, 899 (Pa. Super. 1994). All well-pleaded, material, relevant facts, along with all reasonable inferences therefrom, must be taken as true; *i.e.*, the court may not consider the factual merits of the claims. In re Adoption of S.P.T., 783 A.2d 779, 782 (Pa. Super. 2001). In order to grant a demurrer, it must be certain from the face of the complaint that the claims will not support recovery under any legal theory. Mellon Bank, 650 A.2d at 899; Eckell v. Wilson, 597 A.2d 696, 697-98 (Pa. Super. 1991).

Preliminary objections, whose end result would be the dismissal of a cause of action, should be sustained only where "it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish [its] right to relief." Bourke v. Kazaras, 746 A.2d 642, 643 (Pa. Super. 2000) (citation omitted). Moreover, it is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit recovery. If there is any doubt, it should be resolved by the overruling of the demurrer. Bailey v. Storlazzi, 729 A.2d 1206, 1211 (Pa. Super. 1999).

A preliminary objection due to lack of specificity is intended to ensure that an adverse party's right and ability to answer and defend will not be unduly impaired by a pleader's vagueness in stating the grounds of his or her suit. Stip v. Com., 910 A.2d 775 (Pa. Commw. 2006). The sole question for the court is "whether the pleading is sufficiently clear to enable the defendant to prepare his defense." Paz v. Com. Dep't of Corrections, 580 A.2d 452 (Pa. Commw. 1990). The preliminary objection will be denied if the complaint provides enough facts to allow the defendant to frame a proper answer and prepare a defense. Foster v. Peat Marwick Main & Co., 587 A.2d 382 (Pa. Commw. 1991).

Discussion

Defendant raised five preliminary objections to Plaintiff's complaint: (1) A demurrer based on Plaintiff's failure to show Defendant mutually assented to the account stated. (2) The pleading was insufficient because Plaintiff did not itemize the charges and payments made to Defendant's account. (3) The complaint failed to specify whether the alleged agreement was oral or written. (4) Plaintiff failed to attach a copy of the credit card agreement to the complaint. (5) The verification is defective because it was not signed by Plaintiff.

We will address the first four objections together because they all allege that Plaintiff failed to conform to the pleading requirements for an account stated action. We will then discuss the validity of the verification.

1. Pleading Requirements of an Account Stated Action

Our review of the complaint shows Plaintiff is seeking a judgment against Defendant under an account stated theory. An account stated is an "account in writing, examined and accepted by both parties, which acceptance need not be expressly so, but may be implied from

the circumstances.” Robbins v. Weinstein, 17 A.2d 629, 634 (Pa. Super. 1941). Four elements must be proved in order to prevail on an account stated claim: (1) there has been a running account, (2) a balance remains due, (3) the account has been rendered upon the defendant, and (4) the defendant has assented to the account. Citibank (South Dakota), N.A. v. Ambrose, 13 Pa. D. & C.5th 402 (C.P. Adams 2010). A party assents to the accuracy of the account stated if it retains the statement of account rendered by the other party for an unreasonably long time without objection. Donahue v. City of Philadelphia, 41 A.2d 879 (Pa. Super. 1945).

Defendant states it did not mutually assent to the amount alleged in the billing statement. This is not a proper preliminary objection, but rather it appears to be a denial of Plaintiff’s allegation in the complaint. Defendant is not entitled to have the complaint dismissed because it merely denies Plaintiff’s averments, therefore Defendant’s first objection is overruled.

Defendant next objects to the adequacy of the pleadings and attached documents. In particular, he states the Plaintiff’s failure to attach an account of all the charges and payments made on Defendant’s account renders the complaint insufficiently specific. Plaintiff is not required to attach a detailed history of payments or other accounting to its complaint in an account stated action. To properly plead an account stated claim the plaintiff must only allege there was a running account, a balance remains due, the account was rendered on the defendant and the defendant assented to the account. Plaintiff sufficiently pleaded these required elements in its complaint. Defendant’s second objection is overruled.

Defendant’s third and fourth objection are related. She alleges the failure to state whether the agreement was oral or written and attach the alleged agreement to the complaint violates Pa. R.C.P. No. 1019. Again, Defendant attempts to impose on Plaintiff pleading

requirements that are simply unnecessary in an account stated action. In order to satisfy the requirements of Pa. R.C.P. No. 1019(i) in an account stated action, a copy of the current statement must be attached to the complaint. See e.g. Ambrose, 13 Pa. D. & C.5th 402. A plaintiff is not required to attach the credit card agreement in an account stated action. Id. Plaintiff attached what appears to be a statement of Defendant's account with a closing date of November 19, 2010, indicating Defendant owed \$6,128.75. The complaint seeks a judgment in the amount of \$6,128.75.

Plaintiff clearly satisfied the pleading requirements for an account stated action. Therefore, we overrule Defendant's first four preliminary objections.

2. The Verification

Defendant also objected to the sufficiency of the verification. The verification is signed by Lisa Blumer, who is identified as an employee of Citicorp Credit Services, Inc. ("CCSI"). The verification states CCSI is a subsidiary of Plaintiff; specifically, it is a service provider for Plaintiff that services credit card accounts owned by Plaintiff. Ms Blumer avers she is authorized to make the verification on behalf of Plaintiff and that the facts set forth in the complaint are true and correct upon her information and belief.

Pennsylvania Rule of Civil Procedure 1024 states:

(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 the averment or denial 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 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.

A corporation has the power to sue and be sued. 15 Pa. C.S.A. § 1502(a)(2).

Corporations also have the power to hire officers, employees, and agents with defined duties that can act on behalf of the corporation. 15 Pa. C.S.A. § 1502(a)(16). An officer of a corporation or an employee with specific authorization may verify a complaint on behalf of a corporation. See e.g. Giallorenzo v. American Druggists' Ins. Co., 447 A.2d 974, 975 n. 1 (Pa. Super. 1982).

In this case, Plaintiff is Citibank (South Dakota), N.A. ("Citibank"). The verification is signed by an employee of Citicorp Credit Services, Inc. ("CCSI"), and states CCSI is a subsidiary of Plaintiff that services credit card accounts owned by Plaintiff. Defendant argues CCSI is not a party to these proceedings, and therefore, an employee of CCSI cannot verify the complaint on behalf of Citibank. In support of her position, Defendant cites Atlantic Credit and Finance, Inc. v. Giuliana, 829 A.2d 340 (Pa. Super. 2003) and two common pleas cases that reject a verification signed by a non-party. See Citibank (South Dakota), N.A. v. Haney, No. 2010-3947 (C.P. Centre 2010); Citibank (South Dakota), N.A. v. Danscak, No. 2010-7862 (C.P. Westmoreland 2010). We find that the two Court of Common Pleas decisions are not controlling or authoritative.

In Atlantic Credit and Finance, Inc. v. Giuliana, 829 A.2d 340 (Pa. Super. 2003), the verification to the complaint was signed by a paralegal employed by the plaintiff. The

verification states the information in the complaint was based on information furnished to counsel, the language of the complaint is not of the signer, and the verification is qualified to the extent that the contents of the pleading are that of counsel. The Giuliana Court found that the verification was defective and could not support an entry of judgment against the defendants. However, the court did not state with particularity the reasons the verification was defective.

Appellate case law establishes that the verification requirement is designed to protect a party from spurious allegations. See Monroe Contract Corp. v. Harrison Square, Inc., 405 A.2d 954, 958 (Pa. Super. 1979). However, the verification “must not be transformed into an offensive weapon designed to strike down an otherwise valid position.” Id. Improper verifications should not be brushed aside as a mere technicality, but Pa. R.C.P. No. 126 directs that the Rules of Civil Procedure should be liberally construed to secure the just, speedy and inexpensive determination of every action to which the Rules apply. Rupel v. Bluestein, 421 A.2d 406, 411 (Pa. Super. 1980).

Here, the verification does not qualify the statements of the verifier as in Giuliana. Nor does the verification recite that the information was obtained from another source like the verification in Giuliana. In this case, the verification avers the statements are “true and correct upon [the verifier’s] information and belief.” A person may verify a complaint based upon information and belief. See Pa. R.C.P. No. 1024(a). Additionally, the verification in this case explains the relationship between Plaintiff and CCSI. While that alone may not make the verification legally sufficient, the verification also states the verifier is “authorized to make [the] verification on behalf of plaintiff.” Ms. Blumer is averring that she is an agent of Plaintiff and explains the nature of her agency relationship with Plaintiff in the verification. We find the

verification in this case is valid because it adequately explained how the verifying individual was acting on behalf of Plaintiff.

Defendant's preliminary objection to the verification is overruled.

BY THE COURT:

STEPHEN G. BARATTA, J.