

KIRSTEN L. ANDERSON,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 02-00,053
	:	
AMERICAN GENERAL FINANCE INC.,	:	
	:	
Defendant	:	PRELIMINARY OBJECTIONS

Date: July 22, 2002

OPINION and ORDER

Before the Court are Preliminary Objections to the Amended Complaint in the Nature of a Motion To Strike For Failure to Conform To Law and Demurrer from Defendant, American General Finance, Inc., filed on March 13, 2002. Plaintiff Kirsten L. Anderson filed the original Complaint on January 14, 2002. Defendant filed Preliminary Objections to the original Complaint on February 13, 2002. Plaintiff then filed the Amended Complaint on February 28, 2002, alleging Breach of Contract, Defamation/Libel and Negligence. Defendant filed a Brief in support of the Preliminary Objections on April 12, 2002. Plaintiff filed a brief in opposition to the Preliminary Objections on April 26, 2002.

Defendant's Preliminary Objection to Count I, Breach of Contract, will be sustained and Plaintiff's request for punitive damages on this count will be stricken. The remaining allegations under Count I will remain as Plaintiff has pleaded sufficiently a potential breach of the contract by the Defendant.

Preliminary Objections of Defendant to Count II, Defamation/Libel will be denied, as Plaintiff has stated a sufficient claim of Defamation/Libel.

Defendant's Preliminary Objection to Count III, Negligence will be sustained and the Count stricken. Plaintiff has failed to state a claim on which relief can be granted for Negligence as the parties' obligations are defined by the terms of the contract and are therefore a matter of contract law, not tort law.

Facts

The relevant averments of the Amended Complaint include the following:

1. Kirsten L. Anderson is an adult individual who resides at 702 Northway Road, Williamsport, Lycoming County, Pennsylvania 17701.
2. Defendant is a corporation with offices at 1764 East Third Street, Williamsport, Lycoming County, Pennsylvania 17701.
3. On or about September 28, 1998, Plaintiff and Defendant were involved in litigation concerning an alleged debt, which resulted in legal action filed in District Justice's Court in Lycoming County, Pennsylvania.
4. On September 28, 1998 the parties resolved the matter pursuant to a SETTLEMENT AND RELEASE agreement. (Plaintiff's Exhibit A)
5. Pursuant to the SETTLEMENT AND RELEASE agreement, Defendant agreed to remove any reference of the alleged debt from Plaintiff's credit record.
6. On or about March 31, 2000, Plaintiff applied for a credit card and was denied due to her history, which still showed the aforementioned debt as being delinquent.
7. On April 6, 2000, a letter was sent by Plaintiff's counsel, advising Defendant that they were in violation of the SETTLEMENT AND RELEASE agreement.

8. On or about April 18, 2000, Defendant responded to Plaintiff's letter indicating a response would be provided by April 28, 2000.

9. On or about April 26, 2000 Defendant provided a letter to Plaintiff apologizing and indicating steps would be taken to remove the disputed debt from Plaintiff's credit bureau file.

10. On December 12, 2001, Plaintiff obtained a copy of her credit history, which still contained references to the disputed debt indicating the status as "past due" and "charged off as bad debt".

Plaintiff further alleges in her Amended Complaint that as a result of the failure of Defendant to perform under the SETTLEMENT AND RELEASE agreement, she has:

1. Had to obtain a co-signer for credit transactions
2. Been denied a line of credit at a bank where she works
3. Been unable to obtain conventional credit
4. Endured great embarrassment and humiliation due to the publication of the disputed debt on her credit report
5. Had her reputation in the community damaged, as a person who does not pay their debts
6. Had to incur substantial attorney's fees in an attempt to resolve this matter

DISCUSSION

Plaintiff, Kirsten L. Anderson, comes before this Court with three claims against Defendant American General Finance, Inc.: Breach of Contract, Defamation/Libel, and

Negligence. Following is this Courts reasoning for decisions made on the preliminary objections for each Count.

Count I: Breach of Contract

It is sufficiently possible that Defendant American General Finance, Inc. may have breached the contractual agreement, i.e. the SETTLEMENT AND RELEASE, (Plaintiff Exhibit A) by their apparent failure to remove any reference to the disputed debt from information released by them to the credit bureau, as promised in the agreement, for Count I to proceed. The elements necessary to prove a breach, articulated in Pennsylvania *Law Technology Based Solutions, Inc. v. Electronics College Inc.* 168 F. Supp.2d 375 (2001), Are: 1.) Existence of a valid and binding contract to which the plaintiff and defendant were parties; 2.) The essential terms of the contract; 3.) That Plaintiff complied with the contracts terms; 4.) That the defendant breached a duty imposed by the contract; 5.) That damages resulted from the breach. Plaintiff's amended complaint sufficiently pleads each element so as to require defendant to respond.

This Court, however, will sustain Defendant's Preliminary Objection to Plaintiff's request for punitive damages. Typically, remedies available for a breach of contract include injunctive relief and/or compensatory damages, both of which Plaintiff does in fact request under this Count. Plaintiff however also requests punitive damages. Defendant correctly points out that as a general rule, punitive damages are not allowed in a breach of contract action. *Thorson v. Iron & Glass Bank*, 476 A. 2d 928, 932 (1984). This general rule is supported by numerous other cases including: *Johnson v. Hyundai Motor America*, 698

A.2d 631 (1997); *Daniel Adams Associates, Inc. v. Rimbach Pub. Inc.*, 429 A.2d 726 (1981) ; and *DeLuca v. Fidelity Bank*, 422 A.2d 1159 (1980).

Plaintiff, while not disputing this general rule, continues her argument in favor of punitive damages based upon an assertion that Defendant, as a lending institution, is a “quasi public” organization as defined in *Patterson v. Marine National Bank*, 130 Pa. 419 (1889). “A bank is an institution of a quasi public character and when a bank, without legal cause, refuses to honor a check drawn upon it by a depositor, something more than a mere breach of contract is involved, and it is liable to the depositor for substantial damages.” *Id.* At 428. Therefore, according to Plaintiff, “the breach complained of is a breach of a duty that may be reasonably regarded either as assumed by contract or as imposed by the law independently of contract, therefore the Defendant can be regarded as having committed both a breach and a tort, and if the Plaintiff so desires, the action may be treated as a tort.” (Plaintiff’s Brief In Opposition to Defendant’s Preliminary Objections, April 26, 2002.) Plaintiff also cites, *Pennsylvania Title and Trust Co. v. Meyer*, 201 Pa. 299; 50 A. 998 (1902) and *Uzarski v. Union National Bank*, 33 A.2d 459 (Pa. Super. 1943) to support the claim for substantial damages for not only breach of the contract but has also breached a higher “duty of care” typically associated with such organizations.

Plaintiff’s “quasi public” argument here is unpersuasive. The lending institutions, in *Patterson*, *Pennsylvania Title and Trust*; and in, *Uzarski* all had plaintiffs who were bank depositors. The holding of the deposits from the depositors created the higher “duty of care” between the bank and the depositor arising out of their fiduciary relationship to which Plaintiff now asserts existed between her and the Finance company. Here, however, Plaintiff

Anderson had no funds on deposit with Defendant, American General and therefore Defendant held no similar higher “duty of care” to Plaintiff. Plaintiff’s request for punitive damages under Count I will therefore be stricken. The basic claim of Breach of contract will however be allowed to proceed.

Count II: Defamation/Libel

Plaintiff’s assertion that Defendant should be held liable for the Tort of Defamation/Libel, by virtue of providing debt information about Plaintiff, to a third party who published it, is sufficiently pleaded to proceed to argument. Defendant’s preliminary objection to Count II is therefore denied.

“Under Pennsylvania law, it is for the Court to determine, in first instance, whether statement complained of is capable of defamatory meaning.” *Maier v. Maretti*, 671 A2d. 701, 448 (1995). This Court believes that the “statement complained of” here was the apparently incorrect debt information provided by American General to the Credit unions, and that this statement is in fact capable of defamatory meaning. It will be up to the ultimate fact finder to decide if the “statement complained of is in fact discriminatory. “Whether or not the information provided actually constituted defamation/libel is up to the “trier of fact” to ultimately determine. *Allen Organ Co. v. Galanti Organ Builders, Inc.*, E.D.Pa.1992, 798 F.Supp. 1162.

As the Count of Defamation/Libel is a Tort under the law, Plaintiff correctly relies on Restatement 2nd Of Torts, Section 577(f), which states, “One is liable for the publication of defamation by a third person, whom, as his servant, agent or otherwise, he directs or procures to publish defamatory matter.” It would appear to be an appropriate

inference from the allegations that American General regularly provides information on clients such as the Plaintiff to the credit unions, with apparent full knowledge that information so provided will in fact be published. This is sufficient to this Court to allow the publication of the defamation by a 3rd party argument presented by the Plaintiff to stand.

Under Count II Plaintiff again requests punitive damages, in addition to both injunctive relief and compensatory damages. Unlike in Count I, which was a contract issue and therefore where punitive damages are not appropriate, here if the Defamation/Libel charges are proven to the satisfaction of the “trier of facts” punitive damages would be a possibly appropriate remedy, “for the dual purpose of punishing the defendant for misconduct and deterring defendant and others from engaging in similar misconduct.” *Kelly v. Ford Motor Co.*, 933 F. Supp. 465 (1996).

Count III: Negligence

“In a Negligence action, plaintiff must show that the defendant owed a duty of care, and that this duty was breached.” *Rauch v. Mike-Mayer*, 783 A.2d 815 (2001). Defendant cites *Raab v. Keystone Insurance Co.*, 412 A.2d 638, 639 (1980) in alleging that Count III should be stricken for failure to state a claim on which relief can be granted for Negligence. In *Raab*, the Court held that, “[While] there are circumstances out of which a breach of contract may give rise to an actionable tort, the test for determining whether there is a cause of action in tort growing out of the breach of contract is whether there was an improper performance of the contractual obligation rather than the mere failure to perform.” *Ibid.*, at 188.

Plaintiff cites *Bash v. Bell Telephone Company*, 601 A.2d 825 (1992), for their argument that “although mere non-performance of a contract does not constitute a fraud, it is possible that a breach of contract also gives rise to an actionable tort.” This Court believes Plaintiff misreads this holding. In *Bash*, the Court quoting *Closed Circuit Corporation of America v. Jerrold Electronics Corporation*, 426 F.Supp. 361 (E.D.Pa.1977) 356 noted that federal district court’s thorough analysis of the difference between tort and contract actions, stating that, “to be construed as in tort, however, **the wrong ascribed to defendant must be the gist of the action, the contract being collateral.**” (Highlighting added) *Closed Circuit Corporation*, in turn cited, *Iron Mountain Security Storage Corporation v. American Specialty Foods Inc.*, 457 F. Supp. 1158 (E.D.Pa.1978) for the proposition that,

Distinct differences between civil actions for tort and contract breach have developed at common law. Tort actions lie for breaches of duties imposed by law as a matter of social policy, while contract actions lie only for breaches of duties imposed by mutual consensus agreements between particular individuals.... **To permit a promisee to sue his promisor in tort for breaches of contract inter se would erode the usual rules of contractual recovery and inject confusion into our well settle forms of action.** (Emphasis added)

Ibid., at 364

As in, *Glazer v. Chandler*, 414 Pa. 304, 309-09, 200 A.2d. 416, 418 (1964), also cited in *Raab*, here the “obligations of the parties [between Anderson and American General Finance Inc.] are a matter of private contract law and [therefore] the parties obligations are defined by the terms of the contract, and not by the larger policies embodied in the law of torts.” Defendant’s Preliminary objection to Count III is therefore sustained and Count III, Negligence is stricken.

This Court notes what may appear to be a disparity in the ruling on Count II, Defamation and on this Count III, Negligence, regarding private contractual breaches and causes of action in tort growing out of the breach of contract. With respect to the Negligence claim this Court has now ruled, consistent with previous case law, that contract breaches are a matter of private contract law and are not defined by tort law. Yet, in the Defamation/Libel claim we have denied the Defendants preliminary objection even though both of these claims appear to spring from the same action, *i.e.*, the apparent contract breach by American General. The distinction here is best described by returning to the language found in *Bash*, “to be construed in tort, the wrong ascribed to defendant must be the gist of the action, the contract being collateral.” Here the contract is collateral to the defamation acts. The “gist of the action” under the Defamation/Libel claim is the Defendant’s providing the information to the third party for publication, not their apparent failure to perform under the terms of the contract. Therefore, an action in Tort for Count II is appropriate.

ORDER

Defendant's Preliminary Objection to Count I, Breach of Contract is sustained and Plaintiff's request for punitive damages under this Count is stricken.

Defendant's Preliminary Objection to Count II, Defamation/Libel is denied.

Defendant's Preliminary Objection to Count III, Negligence is sustained and the Count is stricken.

BY THE COURT:

William S. Kieser, Judge

cc: G. Scott Gardner, Esquire
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213 Market St., 9th Floor; Harrisburg, PA 17101
Judges
Paul J. Petcavage, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)