

NATIONAL CITY BANK,

Plaintiff

vs.

TRACY M DIEFFENBACH,

Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA

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: NO. 04-00,727

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: JUDGMENT ON THE PLEADINGS

Date: February 28, 2005

OPINION and ORDER

Before the court for determination is the Motion for Judgment on the Pleadings filed by Plaintiff National City Bank (hereafter “National”) on September 16, 2004. The court will grant the motion.

National filed its complaint in the above captioned matter on May 5, 2004 in which it alleged a breach of contract claim against Defendant Tracy M. Dieffenbach (hereafter “Dieffenbach”). Dieffenbach filed her answer to the complaint on June 15, 2004. In order to maintain a cause of action for a breach of contract, a plaintiff must plead: (1) the existence of a contract including its essential terms; (2) a breach of a duty imposed by the contract; and (3) resultant damages. *Presbyterian Med. Ctr. v. Budel*, 832 A.2d 1066, 1070 (Pa. Super. 2003); *Gorski v. Smith*, 812 A.2d 683, 692 (Pa. Super. 2002). National alleged that it and Dieffenbach had entered into a cardholder agreement whereby it agreed to provide Dieffenbach with a credit card and she agreed to make the monthly payments on the credit card account. National has alleged that Dieffenbach breached the agreement by failing to make the monthly

payments. National alleged that as of April 14, 2004 Dieffenbach had an outstanding balance of \$3,753.02. National further averred that the cardholder agreement provides that National is entitled to finance charges at the rate of 23.90% per annum on the unpaid balance.

Once the relevant pleadings are closed, any party may move for judgment on the pleadings. Pa.R.C.P. 1034. In deciding a motion for judgment on the pleadings, a court may only consider the pleadings and documents that are properly attached to the pleadings. *Casner v. American Fed'n of State, County, and Municipal Employees*, 658 A.2d 865, 869 (Pa. Cmwlth. 1995). A motion for judgment on the pleadings is in the nature of a demurrer in that the well-pleaded allegations of the non-moving party are viewed as true, but only those facts that he has admitted may be used against the non-moving party. *Felli v. Commonwealth, Dep't of Transp.*, 666 A.2d 775, 776 (Pa. Cmwlth. 1995). A motion for judgment on the pleadings may be granted only when there are no material facts at issue and the movant is entitled to judgment as a matter of law. *Ibid; Casner*, 658 A.2d at 869.

Pursuant to Pa.R.C.P. 1029(b), “[a]verments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication.” A Court must examine the pleadings as a whole to determine whether the defendant has admitted the factual allegations of the complaint. *Cercone v. Cercone*, 386 A.2d 1, 6 (Pa. Super. 1978). It should also be remembered that the Rules of Civil Procedure “ ‘... shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The Court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.’ ” *Ibid.* (quoting Pa.R.C.P. 126). “It must be emphasized that ‘... the

rights of litigants should not be made to depend on the skill of the pleaders but rather on the justice of their claims.” *Kappe Assocs., Inc. v. Aetna Cas. & Surety Co.*, 341 A.2d 516, 519 (Pa. Super. 1975) (quoting *Avondale Cut Rate, Inc. v. Assoc. Excess Underwriters, Inc.*, 178 A.2d 758, 762 (Pa. 1962)).

National is entitled to judgment on the pleadings because Dieffenbach failed to deny the pertinent allegations in the complaint, which means that she has admitted them. Dieffenbach’s answer states as follows:

Defendant did attempt to “Settle” debt in May 2004. Settlement was declined by Plaintiff. Defendant did make personal appearance at Prothonotary, William J. Burd’s Office, on May 28, 2004 which was within the twenty (20) day deadline of the original complaint.

The Plaintiff was notified in 2003 of the Defendant’s financial situation due to a fire in the home. The Defendant made effort to notify all debt holders of the income loss and proceeded to research means of satisfying the mentioned debts.

Defendant feels they may be considered “Judgment Proof” due to financial situations and is willing to discuss settlement options with the Plaintiff.

Response to Complaint, *National City Bank v. Dieffenbach*, no. 04-00,727 (Lyc. Cty 2004). Dieffenbach’s answer does not deny that there was an agreement, that she breached it, or that there is an outstanding balance plus finance charges. Dieffenbach’s answer sets forth her efforts to bring the balance current subsequent to the breach and the circumstances of the breach. However, such responses do not equate to denials of the material elements of the claim asserted against her.

Accordingly, the motion for judgment on the pleadings shall be granted.

ORDER

It is hereby ORDERED that Plaintiff National City Bank's Motion for Judgment on the Pleadings is GRANTED.

Judgment shall be entered in favor of National City Bank and against Defendant Tracy M. Dieffenbach in the amount of \$3, 753.02, with continuing interest at the contract rate of 23.90% per annum from April 14, 2004, plus costs.

BY THE COURT:

William S. Kieser, Judge

cc: William T. Molczan, Esquire
Weltman, Weinberg & Reis Co., L.P.A., 2718 Koppers Bldg., 436 7th Avenue,
Pittsburgh, PA 15219
Tracy D. Dieffenbach, Esquire
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)