

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

GE CAPITAL RETAIL BANK,	:	NO. 13 – 02,211
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
DONNA LAMBERT,	:	
Defendant	:	Preliminary Objections

OPINION AND ORDER

Before the court are Defendant’s preliminary objections, filed October 31, 2013. Argument was heard December 19, 2013.

In this credit card collection case, Plaintiff avers that Defendant “applied for, received and used a credit account issued by” Plaintiff, credit card statements are attached to the Complaint, the last payment on the account is shown on one of the included statements, and Plaintiff has suffered monetary damages of \$5,194.00. In her preliminary objections, Defendant raises three issues: (1) the verification is not proper, (2) the written agreement evidencing Defendant having obligated herself to Plaintiff is not attached to the Complaint, and (3) dates of purchase, dates of payment, etc. are not alleged. Each of these will be addressed in turn.

First, Defendant contends the verification must be signed by an officer of the corporation and the verification attached to the instant complaint is signed by someone who states that she is an employee, but not an officer, of the corporation. In support of this contention, Defendant cites Atlantic Credit and Finance v. Giuliana, 829 A.2d 340 (Pa. Super. 2003). There, the Superior Court found “wholly defective and inadequate to support entry of a default judgment the following verification:

The undersigned who is paralegal of Atlantic Credit & Finance Inc. (a corporation organized and existing under the laws of the state of Virginia) (a partnership trading under the trade style in the pleading) (an individual who is the party in the pleading) having reviewed the averments of the attached pleading verifies that the pleading is based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language of the pleading is that of counsel and not of signer. Signer verifies

the within pleading is true and correct to the best of the signer's knowledge, information and belief to the extent that the contents of the pleading are that of counsel, verifier has relied upon counsel in taking this verification. This verification is made subject to the penalties of 18 Pa.C.S.A. 4904 relating to unsworn falsifications to authorities.

Atlantic Credit, *supra*, at 344. The court finds Defendant's reliance on this case misplaced, however. The Atlantic Credit verification is not identical to the verification in the instant case and the court did *not* hold that an officer of the plaintiff corporation was required to sign the verification. This court believes that such a rule would impose an unreasonable burden on credit card companies and banks. Further, the verification in the instant case was made by someone who stated that she is an employee of the corporation, that she has the authority to sign the verification, and that the facts set forth in the complaint are true and correct to the best of her knowledge, information and belief. The court believes this is all that is required by Rule of Civil Procedure 1024. This objection will, therefore, be overruled.

Next, Defendant contends Plaintiff must attach to the Complaint the written credit card agreement which governs in this matter. Plaintiff argues such is not required as it has "pleaded an account stated cause of action". The court rejects this argument for the reasons such an argument was rejected by the Centre County Court of Common Pleas in Capital One Bank v. Clevestine, 7 D.&C. 5th 153 (Centre Co. 2009). As that court so succinctly stated:

An account stated is "...an account in writing, examined and expressly or impliedly accepted by both parties thereto as distinguished from a simple claim or a mere summary of accounts." Target National Bank/ Target Visa v. Samanez, (C.P. Allegheny 2007); Target National Bank / Target Visa v. Celesti (C.P. Allegheny 2007); P.L.E. 2d Contracts § 512, 9-10 (2008). An account stated is appropriate where the parties have an ongoing relationship and the substance of their conversations is averred in the Complaint.

Plaintiff has not set forth sufficient facts regarding Defendant's agreement to either the total amount due and it has not set forth facts which show, in addition to alleged receipt of monthly statements without objection, that Defendant has agreed to pay the amount Plaintiff claims is owed. Plaintiff appears to be relying on Defendant's silence to prove acquiescence to an account stated. This is not a permissible use of the account stated. An account stated is more appropriately pled in a situation in which two equal, sophisticated parties

have an ongoing business relationship. An account stated theory is not appropriate in a credit card account case.

An account stated was traditionally a promise by a debtor to pay a stated amount of money which the parties expressly agreed was owed, in satisfaction of a preexisting debt. 29 Williston on Contracts 4th 73:55. When a debtor has had an opportunity to scrutinize the account, his or her silence is prima facie evidence of acquiescence in an account stated. *Pierce v. Pierce*, 199 Pa. 4, 48 A. 689 (1901), but something more than mere acquiescence by failing to take exception to a series of statements of account received in the mail is required to create an account stated. 13 P.L.E.2d Contracts § 513 at 11-12 (2009), citing *C-E Glass v. Ryan*, 70 Pa. D. & C.2d 251 (C.P. Beaver 1975).

An account stated theory may have been appropriate when credit card issuers gave cardholders fixed interest rates and charged very few fees. With the proliferation of credit cards over the past two decades, however, interest rates have varied and fees have increased in number and severity. It is unreasonable to expect the average debtor to understand the changing terms of a Customer Agreement such that he or she can object to any invoice received in a timely manner. For many, the first and only time they will consider what is in the "fine print" is when they fall behind on payments and find themselves in a position like the one in which Defendant now finds herself.

Id. at 156-158. In the instant case, Plaintiff does not set forth sufficient allegations to establish an "account stated". The Complaint appears to allege that Defendant made some payments on the account but at some point stopped making payments.¹ Nowhere does Plaintiff allege that Defendant was presented with the amount now claimed due, and either expressly or impliedly agreed to pay that amount. Therefore, this objection will be sustained.

Finally, Defendant contends the complaint is insufficient in not setting forth all purchases and payments made. This information may be subject to discovery and need not be set forth in the Complaint in order for Defendant to prepare an Answer and defense. This objection will, therefore, be overruled.

¹ The Complaint asserts that "credit card statements for the account are attached hereto" and "the attached credit card statements include a statement evidencing the last payment on the account". Nowhere does Plaintiff assert that Defendant failed to pay when demanded, or breached the parties' agreement; such must be inferred from the "charge off" shown on the last statement.

ORDER

AND NOW, this 6th day of January 2014, for the foregoing reasons, Defendant's objections are hereby overruled in part and sustained in part. Within twenty (20) days of this date, Plaintiff shall file an amended complaint which either sets forth the appropriate allegations to make out a claim for account stated, or attaches a copy of the credit card agreement.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Benjamin Cavallaro, Esq.
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