

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

<b>PORTFOLIO RECOVERY ASSOCIATES, LLC,</b>	:	
<b>Plaintiffs</b>	:	<b>NO. CV-21-0530</b>
	:	
<b>vs.</b>	:	
	:	
<b>ROGER FUNK,</b>	:	<b>CIVIL ACTION –</b>
<b>Defendant</b>	:	<b>Preliminary Objections</b>

**OPINION AND ORDER**

Before the Court are Defendant’s Preliminary Objections to Plaintiff’s Complaint. For the reasons set forth below, the Preliminary Objections are overruled in part and sustained in part.

**I. Factual Background**

This credit card debt collection action arises out of Defendant’s alleged failure to make full payment of the amount of \$2,298.01 owed on his credit card account. *See Complaint at Paragraphs 5-7.* Plaintiff also alleges that it is the current owner of the account and that it was assigned “all rights, title and interest to Defendant’s Synchrony Bank account . . . .” *See Complaint at Paragraph 2.* Attached to the Complaint is Bill of Sale between Plaintiff and Synchrony Bank. The Bill of Sale contains the following label: “PRA (XO9S) – PLCC 120 MP – July 2020 – g3047260.” Also attached to the Complaint are Defendant’s credit card statements and a template cardholder agreement.

**II. Procedural Background**

Plaintiffs’ Complaint was filed on June 8, 2021 and Defendant’s Preliminary Objections were filed June 30, 2021. Plaintiff filed a Response to the Preliminary Objections and argument was held on September 14, 2021. At the time the Court scheduled this matter for argument, the Court specifically stated

that the Defendant was required to distinguish the facts in this case from those set forth in *Portfolio Recovery Associates, LLC v. Templin*, No. CV-19-740 (Lycoming Co. Oct. 17, 2019).

### **III. Discussion**

Pursuant to the Rules of Civil Procedure, “[p]reliminary objections may be filed by any party to any pleading and are limited to the following grounds:

(2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;

(3) insufficient specificity in a pleading . . .

Pa.R.C.P. 1028(a)(2) and (3).

It is well settled that Pennsylvania is a fact pleading state, meaning that pleadings must put the opponent on notice of the issues and formulate those issues by summarizing the facts essential to the claim. *Catanzaro v. Pennell*, 238 A.3d 504, 507 (Pa. Super. 2020); see also Pa.R.C.P. 1019(a). Rule 1019 of the Pennsylvania Civil Procedure Rules state that “[w]hen any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, 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).

“When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom . . . . If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.” *Richmond v. McHale*, 35 A.3d 779, 783 (Pa. Super. 2012).

Specifically regarding credit card debt disputes, the *Templin* Court, *supra*, held that Plaintiff “sufficiently summarized the material facts necessary to enable Defendant to prepare her defense” when Plaintiff averred that it “is the assignee and successor in interest to Synchrony Bank; that Synchrony Bank issued the original credit account to Defendant at Defendant’s request; that Defendant made use of the credit account and is in default of the credit agreement; that the amount due is \$8,079.27, and; that despite requests from the Plaintiff, Defendant has failed to pay the overdue amount.” *Id.* at 2-3. Additionally, the Court notes that Plaintiff provided a Bill of Sale showing the assignment, documentation linking Defendant to the account, a template version of the account agreement, and the billing records. *Id.* at 2.

In his first Preliminary Objection, Defendant argues that none of the documents attached to Plaintiff’s Complaint contain any indication that the Bill of Sale specifically relates to Defendant’s account. In his second Preliminary Objection, Defendant argues that the Complaint fails to allege details including, but not limited to, when the account was opened and dates and amounts of purchases.

The facts in this case are comparable to those in the *Templin* case. Here, Plaintiff pled that: it was assigned the rights of Defendant’s account from Synchrony Bank; Defendant used or authorized use of the account; Defendant failed to make full payment to the account; and the balance on the account is \$2,298.01. Plaintiff also attached to the Complaint the Bill of Sale, billing

statements, and a template agreement. Plaintiff's shortfall is the fact that there is no documentary evidence to link the Bill of Sale to the Defendant's account.<sup>1</sup>

#### **IV. Conclusion**

Therefore, for the reasons set forth above, Defendant's first Preliminary Objection is sustained and his second Preliminary Objection is overruled. Plaintiff shall have twenty (20) days from the date of this Order to file an Amended Complaint showing a link between the Bill of Sale attached to its original Complaint to the Defendant's account.

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<sup>1</sup> At the time of argument, Counsel for Plaintiff pointed the Court's attention to a document which contained the combination of "g3047260" which is also found on the Bill of Sale. Counsel indicated that this combination is unique to Defendant's account and therefore proves that the Bill of Sale relates to Defendant's account. However, the document to which he was referring was not attached to the Complaint or alleged in any way within the contents of the Complaint.

**ORDER**

**AND NOW**, this 17<sup>th</sup> day of **September, 2021**, upon consideration of Defendant's Preliminary Objections and Plaintiff's response thereto, and for the reasons set forth above, Defendant's Preliminary Objections are **OVERRULED** in part and **SUSTAINED** in part. Specifically, Defendant's Preliminary Objection relating to linking the Bill of Sale to Defendant's account is sustained. All other Preliminary Objections are overruled.

Plaintiff shall have twenty (20) days from the date of this Order to file an Amended Complaint showing a link between the Bill of Sale attached to its original Complaint to the Defendant's account.

BY THE COURT,

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Hon. Ryan M. Tira, Judge

RMT/ads

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