

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2005-3,	:	No. 16-1780
	:	
Plaintiff	:	CIVIL ACTION – LAW
vs.	:	
	:	
SONIA M. COBB,	:	
	:	
Defendant	:	

OPINION AND ORDER

AND NOW, after argument held on December 8, 2021 on Defendant's Preliminary Objections to Plaintiff's Third Amended Complaint, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

Plaintiff commenced this action by filing a Complaint on December 20, 2016, laconically alleging that Defendant executed a student loan agreement with a lender, that the agreement was "transferred and assigned by the original lender to the plaintiff," and that Defendant failed to make required payments, leaving an outstanding balance of \$14,119.37. Defendant filed preliminary objections to the Complaint, which this Court sustained on March 22, 2017, finding the Complaint deficient for failing to establish a chain of custody by which Plaintiff obtained the loan agreement from the original lender. The Court directed Plaintiff to file within thirty days "an amended complaint which attaches further documentation supporting its acquisition of the account from JPMorgan Chase Bank, N.A., specifically the 'Schedule 2' referenced in Article 1 of the 'Pool Supplement' and the correct 'Schedule A' referenced in Article 1 of the 'Deposit and Sale Agreement', both attached as Exhibit 'B' to the Complaint."

Plaintiff did not file an Amended Complaint (the “First Amended Complaint”) until August 4, 2020. The First Amended Complaint included more specific allegations about how the loan agreement came into Plaintiff’s possession, alleging that Defendant applied for and received credit from JPMorgan Chase Bank, N.A., and that the loan was transferred to National Collegiate Funding LLC and ultimately sold to Plaintiff. Plaintiff attached the “Pool Supplement” as Exhibit B to the First Amended Complaint, contending that it “demonstrate[d] the chain of title for the Defendants’ [sic] account.”

Defendant filed preliminary objections to the First Amended Complaint, which this Court sustained on October 15, 2020. The Court held that “[t]he ‘Pool Supplement’ taken alone is insufficient to establish that Defendant’s account was among those transferred from J.P. Morgan to National Collegiate, as the accounts transferred are not itemized” and that “it is not evident to the Court that the attached ‘Schedule A’ or ‘Schedule B’ to the ‘Deposit and Sale Agreement’ demonstrate that Defendant’s account was among those transferred from National Collegiate to Plaintiff.” The Court explained to Plaintiff that if it “maintains otherwise, then the impetus is upon Plaintiff to clarify within the Amended Complaint where Defendant’s account is listed.” The Court also faulted the First Amended Complaint for not including the date of the alleged default, which was “essential, because the date when the breach occurred may implicate the statute of limitations.”

Plaintiff filed a Second Amended Complaint on November 4, 2020, which reproduced the contents of the First Amended Complaint with two additions. The first addition was Paragraph 7, which read: “An excerpt of Schedule 2 referenced in the

'Pool Supplement' showing Defendant's account with Amanda G. Cobb's¹ last 4 digits of her Social Security Number is attached hereto as Exhibit C." The second addition was Paragraph 10, which read "Defendants [sic] last made payment on June 26, 2014."

Defendant once again filed, and the Court once again sustained, preliminary objections. In its September 14, 2021 Order, the Court concluded that the additional Exhibit C, which "includes the last four digits of Defendant's social security number," was sufficient to constitute "*prima facie* evidence that Defendant's loan was among those transferred from J.P. Morgan to National Collegiate." The Court concluded, however, that Plaintiff had still not met its burden to "identify within the Complaint which of the transferred student loan agreements listed in the 'Schedule A' or 'Schedule B' forms were alleged to include Defendant's loan," and thus had still not established the transfer of the loan from National Collegiate Funding to Plaintiff.

Plaintiff filed a Third Amended Complaint on September 30, 2021. The Third Amended Complaint added the following paragraphs:

- "9. Pursuant to the 'Deposit and Sale Agreement,' the Defendant's account was among those transferred from The National Collegiate Funding, LLC to the Plaintiff.
10. The attached 'Schedule A' of the 'Deposit and Sale Agreement' lists the Pool Supplement that transferred ownership of the Defendant's account to the Plaintiff. Specifically, the second bullet point of Schedule A which identifies loans that were originated under Bank One's CORPORATE ADVANTAGE Loan Program, EDUCATION ONE Loan Program and M&T REFERRAL Loan Program.

¹ Plaintiff alleges Defendant, Sonia Cobb, was a cosigner on the loan taken out by Amanda Cobb, who is not a party to this action.

11. Reference to the ‘Loan Request/Credit Agreement’ shows that the Defendant’s loan originated under the Education One Loan Program.”

Defendant filed the same three preliminary objections to Plaintiff’s Third Amended Complaint as she had to the previous versions: an objection to standing, alleging the Complaint is legally insufficient because Plaintiff has not shown a *prima facie* case that it holds the relevant loan agreement; a similar objection that Plaintiff has not established it is a real party in interest; and an objection to the verification attached to the Third Amended Complaint because, Defendant contends, it was not made by a “person with personal knowledge of the factual averments or denials” in the Complaint.

ARGUMENT AND ANALYSIS

A. Defendant’s First and Second Preliminary Objection

Defendant’s first² and second³ preliminary objections allege Plaintiff has not demonstrated standing or that it is a real party in interest because it has failed to satisfactorily demonstrate that it is the entity that currently owns Defendant’s loan obligation. Defendant argues, essentially, that Plaintiff did not attach any documents to its Third Amended Complaint that were not attached to its Second Amended Complaint, and that the three new paragraphs in the Third Amended Complaint are insufficient to establish the possession of the loan or otherwise satisfy this Court’s directive to “identify within the Complaint which of the transferred student loan

² Defendant’s first preliminary objection is premised on Pa. R.C.P. 1028(a)(4) (permitting a preliminary objection for “legal insufficiency of a pleading (demurrer)”) and Pa. R.C.P. 1028(a)(5) (permitting a preliminary objection for “lac of capacity to sue...”).

³ Defendant’s second preliminary objection is premised on Pa. R.C.P. 1028(a)(2) (permitting a preliminary objection for “failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter”) and Pa. R.C.P. 1028(a)(5).

agreements listed in the 'Schedule A' or 'Schedule B' forms were alleged to include Defendant's loan."

Plaintiff argues that it has now fully complied with the Court's last order and provided all of the information necessary to establish the loan's custody from JP Morgan Chase to National Collegiate to Plaintiff. Plaintiff emphasizes that at the pleading stage Plaintiff does not have a duty to provide evidence, but rather to set forth well-pleaded allegations to "form the issue and to restrict the proof of trial to those issues."⁴ More specifically, Plaintiff directs the Court to the third of fifty-three bullet points contained in the "Schedule A" attached to Exhibit D, which describes a class of loans offered pursuant to Bank One's Education One Loan Program.⁵ Further, Plaintiff cites two memorandum opinions, one authored by the Lackawanna County Court of Common Pleas and the other by the Somerset County Court of Common Pleas, as providing persuasive support of its contention that it has satisfied its burden at the pleading stage.⁶

⁴ Plaintiff's Brief, p.4 (*quoting Marine Bank v. Orlando*, 25 Pa. D & C.3d 264, 265 (CITE))

⁵ The Third Amended Complaint misidentifies the relevant entry in Schedule A as the second bullet point.

⁶ In Commonwealth Financial Systems, Inc. v. Michelle Barnard (Lackawanna County C.C.P. 2007), the Honorable Terrance R. Nealon stated "[the plaintiff] has adequately averred the various assignments which afford it standing and the capacity to sue [the defendant] for her outstanding credit card debt. Moreover, [the plaintiff] has provided [the defendant] with fair notice of its claim and a summary of the material facts supporting that claim. Any additional specifics regarding the individual credit card transactions may be appropriate subjects for discovery, but do not warrant dismissal of the complaint...." Plaintiff also cited Commonwealth Financial Systems, Inc. v. Jennifer L. Reeping (Somerset County C.C.P. 2009), which discussed in detail the requirements for a party to prove that it is a real party in interest, and explained that averments of such are generally sufficient at the pleading stage, with proof being required prior to the summary judgment stage.

Before it, the Court has the following Exhibits to the Third Amended

Complaint:

- Exhibit A is the loan agreement itself, which indicates it was offered pursuant to the “Education One Undergraduate Loan” program to Amanda Cobb (last four digits of Social Security Number 4280) by “Bank One (JP Morgan Chase Bank, N.A.)” on August 10, 2005;
- Exhibits B and C are, respectively, the October 12, 2005 Pool Supplement and the excerpt of the Schedule 2 referenced in the Pool Supplement, which together describe a loan with lender “Bank One,” described as “DTC – Ed One – Undergraduate,” and including a redacted Social Security Number with last four digits 4280;
- Exhibit D is a Deposit and Sale agreement between National Collegiate Funding and Plaintiff, which lists a group of loans described as “Bank One, N.A., dated October 12, 2005, for loans that were originated under Bank One’s CORPORATE ADVANTAGE Loan Program, EDUCATION ONE Loan Program and M&T REFERRAL Loan Program” as having been transferred from National Collegiate Funding to Plaintiff.

Crucially, Plaintiff has now “identified within the Complaint which of the transferred student loan agreements listed in the ‘Schedule A’ or ‘Schedule B’ forms were alleged to include Defendant’s loan.”⁷ Specifically, it has indicated that Defendant’s loan was referenced in bullet point 3 of the Schedule A attached to Exhibit D, describing a group of loans issued pursuant to the “Education One Undergraduate Loan” program and transferred from JP Morgan Chase to National Collegiate Funding. The description in this bullet point is “Bank One, N.A., dated October 12, 2005 for loans that were originated under Bank One’s... EDUCATION

⁷ It is true that Exhibit D was attached to Plaintiff’s Second Amended Complaint, the preliminary objections to which this Court sustained. Exhibit D, however, contains descriptions of fifty-three separate groups of loans, and the Second Amended Complaint did not specify which, if any, of these separate descriptions allegedly included Defendant’s loan. In contrast to the Second Amended Complaint, Plaintiff’s Third Amended Complaint identifies the third of these fifty-three separate groups of loans as the one containing Defendant’s loan, and demonstrates in the Complaint how this third group has the same identifying characteristics as those contained in Exhibits A, B and C.

ONE Loan Program”; the Pool Supplement contained in Exhibits B and C, which was already deemed sufficient to establish transfer of the loan from JP Morgan Chase to National Collegiate Funding, is dated October 12, 2005.

As such, the Court concludes that Plaintiff has successfully pled with specificity a complete chain of title from JP Morgan Chase to National Collegiate Funding to Plaintiff establishing Plaintiff’s current ownership of Defendant’s loan obligation.⁸ For this reason, Defendant’s first and second preliminary objections are OVERRULED.

B. Defendant’s Third Preliminary Objection

Defendant’s third preliminary objection⁹ is to Plaintiff’s verification, alleging that it is not made by a “person with personal knowledge of the factual averments or denials” in the Complaint.¹⁰ Defendant argues that pursuant to the plain language of Rule 1024 the Complaint must be verified by someone with “personal knowledge of the alleged transfer documents at issue here, including of the Pool Supplements and the Deposit and Sale Agreement,” rather than by Aaron Motin, the Legal Case Manager of Plaintiff’s servicer.¹¹

Defendant responded to this objection in a cursory manner, averring that its verification was sufficient in that the initial attorney verification filed by Plaintiff’s

⁸ It will of course be incumbent upon Plaintiff to ultimately prove these allegations with sufficient evidence, and the Court takes no position at this time as to what additional evidence, if any, will be required to prove Plaintiff’s ownership of the loan at the summary judgment or trial stage.

⁹ Defendant’s third preliminary objection is premised on Pa. R.C.P. 1028(a)(2).

¹⁰ See Pa. R.C.P. 1024(a). The Court addresses this issue for the first time in this case; although Defendant raised a similar objection to Plaintiff’s Second Amended Complaint, in light of the Court’s ruling on those previous preliminary objections the dispute as to the verification’s propriety was rendered moot.

¹¹ Preliminary Objections, ¶¶16-19.

counsel had been substituted with the verification of Aaron Motin; in its Answer to Defendant's Preliminary Objections and Brief in Opposition, Plaintiff did not seem to realize that it was the verification of Motin, rather than the prior verification of counsel, to which Defendant objected.

Verifications of pleadings are governed by Pennsylvania Rule of Civil

Procedure 1024. Rule 1024(a) states:

"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."

Rule 1024(c) provides:

"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.... 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."

Here, Motin included in his verification that he is "the "Legal Case Manager for Transworld System, Inc., ... servicer for Plaintiff"; that he is "fully familiar with the facts set forth in the... Third Amended Complaint"; that he is "authorized to make this Verification on behalf of Plaintiff"; and that "the facts set forth in the within allegations are true and correct to the best of [his] knowledge...."

The representative of a party may make verification on behalf of that party pursuant to Rule 1024(a) without having to satisfy the additional requirements of Rule 1024(c).¹² Plaintiff here is a trust, not a corporate entity; the legal case manager of

¹² See *JP Morgan Chase Bank, N.A. v. Murray*, 63 A.3d 1258, 1271 (Pa. Super. 2013).

the company servicing a trust is certainly an appropriate representative of the trust capable of verifying a pleading on its behalf. Therefore, the Court disagrees with Defendant's contention that Motin "is not [a]... representative of the plaintiff...."

Defendant further contends the verification must be "based on personal knowledge of the alleged transfer documents at issue."¹³ Rule 1024(a), however, provides that the verification of a party may also be based on "information and belief." Thus, although personal knowledge is sufficient to allow a party representative to verify a pleading, it is not necessary if that party representative is able to verify the pleading upon information and belief. Under Rule 1024(a), when there is a party representative who has "personal knowledge or information or belief" as to the truth of the contents of a pleading, he "need not aver the source of the information or expectation of ability to prove the averment or denial at the trial."¹⁴

Because Plaintiff has complied with the verification requirements of Rule 1024, Defendant's third preliminary objection is **OVERRULED**.

ORDER

For the foregoing reasons, Defendant's Preliminary Objections to Plaintiff's Third Amended Complaint are **OVERRULED**. Defendant is hereby directed to file an Answer to the Third Amended Complaint within twenty (20) days of the date of this Opinion and Order.

¹³ Defendant does not suggest what is to be done if there is no employee or representative of Plaintiff with personal knowledge of the transfer documents.

¹⁴ The Court is satisfied that the documents attached to the Third Amended Complaint could form a sufficient basis for knowledge or information and belief that the facts in the Third Amended Complaint are true.

IT IS SO ORDERED this 16th day of March 2022.

By the Court,

Eric R. Linhardt, Judge

ERL/jcr

cc: Michael F. Ratchford, Esq.

54 Glenmaura National Blvd., Suite 104, Moosic, PA 18507

Jennifer Heverly, Esq.

Gary Weber, Esq. (Lycoming Reporter)