

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

**FIRST NATIONAL BANK OF OMAHA,
Plaintiffs**

vs.

**DENNIS M. HOLT,
Defendant**

:
: **NO. CV-21-1238**
:
:
:
: **CIVIL ACTION –**
: **Preliminary Objections**

OPINION AND ORDER

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

I. Factual Background

The Amended Complaint alleges that the Plaintiff and Defendant entered into a retail installment agreement on or about August 9, 2018, and the account number issued ended in 1187. This credit card debt collection action arises out of Defendant’s alleged failure to make full payment of the amount of \$6,336.95 owed on his credit card account. Also attached to the Amended Complaint are Defendant’s credit card statements, a template cardholder agreement, and an additional document with information about interest rates and fees.

II. Procedural Background

Plaintiff’s Complaint was filed on December 13, 2021, and Defendant’s Preliminary Objections were filed December 30, 2021. Plaintiff filed a Response to the Preliminary Objections on January 24, 2022, and argument was held on February 22, 2022, with Nicholas J. Raker, Esquire, participating by telephone on behalf of the Plaintiff and Kristian Villegas, Esquire, appearing on behalf of the Defendant. On March 2, 2022, this Court entered an Order sustaining

Defendant's preliminary objection pursuant to Pa.R.C.P. 1028(a)(2), as the agreement attached to the Complaint referenced a "Schedule" which contained terms such as how minimum payments and interest rates are calculated. The Plaintiff's counsel confirmed that the "Schedule" is a separate document and this Court, after finding that the interest rate and fees were material terms of the agreement, ordered the Plaintiff to file an Amended Complaint within 20 days which contained an averment of the specific interest rate and fees pertinent to the cardholder agreement or attached as an exhibit the separate "Schedule" referenced in the cardholder agreement. On March 22, 2022, the Plaintiff filed an Amended Complaint. On April 11, 2022, the Defendant again filed Preliminary Objections to the Amended Complaint. Argument on the Preliminary Objections was held on August 8, 2022.

III. Discussion

Defendant's first Preliminary Objection falls under Pa.R.C.P. 1028(a)(2), "failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter." Rule 1019 of the Pennsylvania Rules of Civil Procedure states 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). Here, the Defendant previously argued that the cardmember agreement attached to the Complaint did not include the specific or material terms, including fees or interest that will be charged. The agreement attached to the Complaint referenced a "Schedule" which is a separate document that contains terms such as how

minimum payments and interest rates are calculated. The Court agreed that the interest rate and fees are material terms of the agreement and therefore must be attached to the Complaint pursuant to Pa.R.C.P. 1019(i). The Plaintiff was Ordered to File an Amended Complaint within 20 days which included this information.

The Amended Complaint filed on March 22, 2022, contained an Exhibit A which was the Cardmember Agreement attached to the original Complaint, as well as a 1 page document which is purportedly the “Schedule.” Defendant’s Preliminary Objection to the Amended Complaint indicates that the complete writing containing the material terms is not attached. After reviewing the Amended Complaint and the exhibits thereto, this Court finds that the document which Plaintiff included in addition to the Cardmember Agreement appears to be a disclosure about interest rates and charges and fees but still does not provide ample evidence of the Defendant’s contractual agreement to pay a specific interest rate. The Defendant’s counsel noted that there is a notation at the bottom of the additional materials included in the Amended Complaint indicating that it is page 2 of 2, but that there is no page 1 of 2 attached. The Court notes that the last sentence on the additional document states “[t]his disclosure together with the Rates and Terms Schedule and accompanying Cardmember Agreement, govern your credit card account with us and are referred to collectively as the ‘Agreement.’” The Amended Complaint lacks the “Rates and Terms Schedule” referenced in the disclosure, and that this document likely includes material terms related to the contractual obligation of the Defendant. The Court finds that

the “Rates and Terms Schedule” was not attached to the Amended Complaint as required in this Court’s Order of March 2, 2022.

ORDER

AND NOW, this 9th day of **August, 2022**, upon consideration of Defendant’s Preliminary Objections to the Amended Complaint and Plaintiff’s response thereto, and for the reasons set forth above, Defendant’s Preliminary Objection with respect to Pa.R.C.P. 1028(a)(2) is **SUSTAINED**. Plaintiff shall have twenty (20) days from the date of this Order to file a Second Amended Complaint which evidences the Defendant’s contractual agreement to pay interest, either in the form of (1) an averment of the specific interest rate and fees pertinent to the initial cardholder agreement or (2) attaches as an exhibit the full separate “Rates and Terms Schedule” referenced in the cardholder agreement (See Section 8, which indicates that the APRs (and their daily periodic rates) in effect on your account are listed in the Schedule) and additional disclosure. Failure to comply with this directive may result in the loss of the Plaintiff’s ability to proceed on claims involving the collection of interest charged on the alleged purchases.

Defendant's Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(3), is **OVERRULED**, as this was previously litigated and ruled upon in this Court's Order dated March 2, 2022.

BY THE COURT,

Ryan M. Tira, Judge

RMT/jel

CC: Nicholas J. Raker, Esquire
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