

**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 Complaint. For the reasons set forth below, the Preliminary Objections are overruled in part and sustained in part.

**I. Factual Background**

The 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 Complaint are Defendant’s credit card statements and a template cardholder agreement.

**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. 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**

Defendant's first Preliminary Objection is pursuant to Pa.R.C.P. 1028(a)(3), insufficient specificity in a pleading. Defendant claims that although the Plaintiff has attached credit card statements to the Complaint, they only show the delinquent amount, but do not show where the balance originated. Specifically, Defendant states the Complaint fails to sufficiently allege all dates of purchase by Defendant, dates of payments by Defendant, and all other documents relating to the claim set forth in the Complaint. As a result of this lack of specificity, Defendant claims he is unable to respond to the allegations in the Complaint.

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 "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. These allegations, coupled with the fact that plaintiff attached a template version of the account agreement and the billing records reflecting the balance requested, put defendant on notice of the claims. *Id.* at 2.

The facts in this case are comparable to those in the *Templin* case. Here, Plaintiff pled that Defendant used or authorized use of the account; Defendant failed to make full payment to the account; and the balance on the account is

\$6,336.95. Plaintiff also attached to the Complaint a template cardmember agreement and approximately one year's worth of billing statements. In the present case, however, there is no Bill of Sale, as Plaintiff is the original debtor.

Defendant argues that the first billing statement attached to the Complaint shows a previous balance of \$1,326.10, and because the Plaintiff did not substantiate that amount, the Defendant is unaware of how the Plaintiff arrived at the total amount claimed and therefore, the claim should be stricken. This Court disagrees. 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).

Contrary to the Defendant's assertion, the Plaintiff need not plead every detail of the claim, nor provide a zero balance explanation at this stage. The Plaintiff attached one year's worth of statements to the Complaint, the first of which clearly shows that the Defendant had a previous balance of \$1,326.10. The amount owed on the last statement is equal to the amount demanded in the Complaint. This is sufficient to put the Defendant on notice of the claims against him. The Defendant is free to seek information about the source and origin of the previous balance through the discovery process. The failure to provide card statements all the way back to a zero balance does not negate the Defendant's awareness of the claim against him and is not cause to strike or dismiss the Complaint.

Defendant's second 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, Defendant argues that the cardmember agreement attached to the Complaint does not include the specific or material terms, including fees or interest that will be charged. The agreement attached to the Complaint references a “Schedule” which contains terms such as how minimum payments and interest rates are calculated. At the time of the argument on the Preliminary Objections, Plaintiff’s counsel confirmed that the “Schedule” is a separate document. The Court agrees 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).

#### **IV. Conclusion**

Therefore, for the reasons set forth above, Defendant’s first Preliminary Objection is **OVERRULED** and the second Preliminary Objection is **SUSTAINED**. Plaintiff shall have twenty (20) days from the date of this Order to file an Amended Complaint which either (1) contains an averment of the specific interest rate and fees pertinent to the cardholder agreement or (2) attaches as an exhibit the separate “Schedule” referenced in the cardholder agreement.

**ORDER**

**AND NOW**, this 1<sup>st</sup> day of **March, 2022**, 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 for insufficient specificity in the pleading is overruled. Defendant's Preliminary Objection regarding the omission of material terms of the agreement is sustained.

Plaintiff shall have twenty (20) days from the date of this Order to file an Amended Complaint which either (1) contains an averment of the specific interest rate and fees pertinent to the cardholder agreement or (2) attaches as an exhibit the separate "Schedule" referenced in the cardholder agreement.

BY THE COURT,

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Ryan M. Tira, Judge

RMT/jel

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