

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

PORTFOLIO RECOVERY ASSOCIATES, LLC,	:	
Plaintiffs	:	NO. CV-22-00465
	:	
vs.	:	
	:	
JAYME KEISTER,	:	CIVIL ACTION –
Defendant	:	Preliminary Objections

OPINION AND ORDER

Before the Court are Defendant’s Preliminary Objections filed on June 10, 2022, to Plaintiff’s Complaint. This credit card debt collection action arises out of Defendant’s alleged failure to make full payment of the amount of \$2,949.08 owed on a credit card account. Defendant raises five Preliminary Objections to the Complaint, which will be addressed below.

1. Standing and 2. Real Party in Interest

In its Complaint, Plaintiff admits that it is not the original lender, but rather that it is the owner of a debt as a “purchaser, assignee, and successor in interest.” Plaintiff attached a Bill of Sale of accounts which it states are set forth in the “Notification Files (as defined in the Agreement).” Defendant notes that neither the Agreement nor the Notification Files were attached to the Complaint and, therefore, Plaintiff failed to provide any documentation that it was assigned the debt as alleged in its Complaint. Defendant’s first Preliminary Objection falls under Pa.R.C.P. 1028(a)(4), legal insufficiency of a pleading, and (5) lack of capacity to sue.

The Defendant’s second Preliminary Objection alleges that the Complaint is deficient under Pa.R.C.P. 2002, which requires that all actions be prosecuted by and in the name of the real party in interest and, similarly to the first

Preliminary Objection, Plaintiff has not shown that it has an interest in this matter. Defendant files this Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(2), failure of a pleading to conform to law or rule of court, and (5), lack of capacity to sue.

In its Brief in Opposition to Defendant's Preliminary Objections, Plaintiff argues that Pa.R.C.P. 2002 "permits an assignee to sue in his own name without joining the assignor as a nominal party" if it "traces in the pleading the derivation of the cause of action from its assignor." Brown v. Esposito, 42 A.2d 93 (Pa. Super. 1945). Further, "[t]he derivation of the title to the cause of action must be alleged affirmatively as a fact, so that the defendant may require proof of the assignment if he so desires." Id. at 94. Plaintiff argues that the Complaint clearly states that the Plaintiff is "the purchaser, assignee, and/or successor in interest and is now the holder of the Account." While the Complaint does state that Plaintiff is now the holder of the Account, the Bill of Sale attached to the Complaint is a one page document indicating that Synchrony Bank ("Seller") "transfers, conveys, grants and delivers to Portfolio Recovery Associates, LLC ("Buyer"), to the extent of its ownership, the Accounts as set forth in the Notification Files (as defined in the Agreement), delivered by Seller to Buyer on or about 19th day of January 2021, and as further described in the Agreement." This Bill of Sale does not provide any evidence linking Defendant's specific account as part of the sale. As Defendant is entitled to require proof of the assignment to ensure that Plaintiff has standing to sue to recover the amounts alleged to be owed, Defendant's first and second Preliminary Objections are hereby **SUSTAINED**.

3. Failure to Attach Written Agreement

Defendant's third Preliminary Objection is filed pursuant to Pa.R.C.P. 1028(a)(2), failure of a pleading to conform to law or rule of court. Pa.R.C.P. 1019(i) requires that a writing that forms the basis of the complaint be attached to the complaint. In this case, Plaintiff alleges that the action is based upon a "credit account," which presumably began with a written agreement between Old Navy Credit Card and the Defendant. Plaintiff attaches Old Navy credit card statements to the Complaint; however, instead of attaching the terms and conditions for the Old Navy Credit Card, Plaintiff attaches the terms and conditions for a Gap Credit Card. Defendant avers that without the terms and conditions of the agreement she is unable to ascertain whether or not she has violated the agreement or what the allocation of fees and interest would be.

After review of the Complaint and the attachments thereto, this Court finds that the documents attached to the Complaint describing rates and fees, standard provisions, and any addendums thereto all reference a Gap, Inc. credit card account. Accordingly, Defendant's third Preliminary Objection is **SUSTAINED.**

4. Demurrer

Defendant's fourth Preliminary Objection, pursuant to Pa.R.C.P. 1028(a)(4), legal insufficiency of a pleading, alleges that Plaintiff's Complaint makes no reference to a breach of contract, and does not include any factual allegations that would support a finding of an express or implied agreement that Defendant owes the amount set forth in the statements.

It is well settled that Pennsylvania is a fact pleading state and that when a Court is considering preliminary objections, all material facts set forth in the complaint, as well as reasonable inferences therefrom, are admitted as true. *Catanzaro v. Pennell*, 238 A.3d 504, 507 (Pa.Super. 2020); *Richmond v. McHale*, 35 A.3d 779, 783 (Pa.Super. 2012). “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).

Plaintiff alleges in its Complaint, among other things: that Defendant was issued a credit account by Synchrony Bank/Old Navy; by using the account Defendant agreed to repay any incurred balances and/or charges made pursuant to the written terms and conditions governing the account; that Defendant obtained and used the credit account; that Defendant failed to make full payment such that Defendant owes a balance of \$2,949.08.; and that Plaintiff is the purchaser, assignee, and/or successor in interest to Synchrony Bank and the current holder of the account.¹ This Court finds from the facts pled in Plaintiff’s Complaint, a reasonable inference could be made that Plaintiff is alleging a breach of contract as a result of an agreement between Defendant and Synchrony Bank for the issuance of a credit account, of which Plaintiff is now the owner. Therefore, Defendant’s fourth Preliminary Objection is **OVERRULED**.

5. Insufficient Specificity

Defendant’s fifth Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(3), insufficient specificity in a pleading, indicates that the Complaint fails to allege

¹ “In a claim for breach of contract, the plaintiff must allege that ‘there was a contract, the defendant breached it, and plaintiff[] suffered damages from the breach.’” *Discover Bank v. Stucka*, 33 A.3d 82, 87 (Pa.Super. 2011), citing *McShea v. City of Philadelphia*, 995 A.2d 334, 340 (Pa. 2010).

dates of purchase by Defendant, dates of payment by Defendant, and proof that Defendant was credited for such payments. Defendant further alleges that due to the lack of specificity in the Complaint, including the failure of the Plaintiff to attach all of the actual statements of account showing purchases and credits, the Defendant is unable to respond to the allegations in Plaintiff's Complaint.

We reiterate 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 at 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. The Plaintiff provided an account statement in which the amount owed is equal to the amount demanded in the Complaint. This is sufficient to put the Defendant on notice of the claims against her. The Defendant is free to seek information about the dates of purchase, dates of payment, and proof that Defendant was credited for any payments through the discovery process. Accordingly, Defendant's fifth Preliminary Objection is **OVERRULED**.

ORDER

AND NOW, this 18th day of **August, 2022**, upon consideration of Defendant's Preliminary Objections to Plaintiff's Complaint and Plaintiff's response thereto, and for the reasons set forth above:

1. Plaintiff's first Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(4), legal insufficiency of a pleading, and (5) lack of capacity to sue is **SUSTAINED**. Within thirty (30) days of the date of this Order Plaintiff shall file an Amended Complaint attaching the Agreement and the Notification Files

referenced in the Bill of Sale or other documentation evidencing proof that Defendant's specific account was included in the Bill of Sale.

2. Plaintiff's second Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(2), failure of a pleading to conform to law or rule of court, and (5), lack of capacity to sue is **SUSTAINED**. Within thirty (30) days of the date of this Order Plaintiff shall file an Amended Complaint attaching the Agreement and the Notification Files referenced in the Bill of Sale or other documentation evidencing proof that Defendant's specific account was included in the Bill of Sale.

3. Plaintiff's third Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(2), failure of a pleading to conform to law or rule of court, is **SUSTAINED**. Within thirty (30) days of the date of this Order Plaintiff shall file an Amended Complaint attaching the credit card agreement for the Old Navy credit card the Plaintiff alleges the Defendant was issued.

4. Plaintiff's fourth Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(4) in the form of a demurrer is **OVERRULED**.

5. Plaintiff's fifth Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(3) is **OVERRULED**.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/jel

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